DAVID C. SHEPARD

VS.

NORTHERN PACIFIC RAILWAY COMPANY, ET AL.

COMPLETE INDEX

		PAGE.
JOHN B. BAIRD:		
Direct examination,	Vol 3	1434–1492
Complainant's Exhibit	35	1441
" "	36	1445
" "	37	1447
" "	38	1447
" "	39	1448
" "	40	1459
" "	41	1460
" "	42	1472
" "	43	1483
" "	44	1486
" "	45	1488
" "	46	1491
Cross-examination		1492–1514
Re-direct examination		1514–1531
Complainant's Exhibit	47	1523
" "	48	1528
Re-cross examination		1531–1591
JOHN B. BAIRD—Recalled for Complainant:		
Direct examination,	Vol. 4	2187–2194
Complainant's Exhibit	67	2190
Cross-examination		2194–2208
Re-direct examination		2208–2209
Re-cross examination		2209–2211
FRED E. BARNEY:		
Direct examination,	Vol. 2	1092–1098
Cross-examination		1098–1108
Re-direct examination		1108–1109
Re-cross examination		1109–1113

JOHN B. BERRY: PAGE.

Direct examination, Vol. 2..... 718–756
Complainant's Exhibit 24..... 722
" " 25..... 727
Cross-examination 756–886
Complainant's Exhibit 26..... 842
Re-direct examination 886–899
Re-cross examination 900–904

CHARLES W. BUNN—For Complainant:

Direct examination, Vol. 4.....2183–2185
Cross-examination 2185–2186

ALEX. M. CLELAND:

Direct examination, Vol. 3.....1599–1622
Complainant's Exhibit 49..... 1604
" " 50..... 1608
" " 51..... 1611
" " 52..... 1614
" " 53..... 1616
Cross-examination 1622–1657

THOMAS COOPER:

Direct examination, Vol. 1..... 122–147
Complainant's Exhibit 8..... 125
" " 9..... 126
" " 10..... 133
" " 11..... 141
Cross-examination 147–238
Defendants' Exhibit C..... 172
Re-direct examination 238–259
Complainant's Exhibit 12..... 238

THOMAS COOPER—Recalled:

Cross-examination 420–444
Defendants' Exhibit L..... 421
" " M..... 426
" " M-1..... 436
Re-direct examination 444–452
Re-cross examination 453–454

	PAGE.
THOMAS COOPER—Recalled:	
Direct examination, Vol. 2	1059–1071
Complainant's Exhibit 29	1061
" " 30	1064
Cross-examination	1071–1092
THOMAS COOPER—Recalled for Complainant:	
Direct examination, Vol. 6	3040–3077
Complainant's Exhibit 70	3041
" " 71	3043
" " 72	3047
" " 73	3049
" " 74	3052
" " 75	3055
" " 76	3062
" " 77	3068
" " 78	3077
Cross-examination	3078–3119
Re-direct examination	3119–3121
WILLIAM L. DARLING:	
Direct examination, Vol. 1	5–47
Complainant's Exhibit 1	6
" " 2	7
" " 3	55
Cross-examination	47–121
Defendants' Exhibit B	114
Complainant's Exhibit 4	118
" " 5	121
" " 6	121
" " 7	121
WILLIAM L. DARLING—Recalled:	
Direct examination	534–536
Cross-examination	536–566
Re-direct examination	566–578
Re-cross examination	578–590
Defendants' Exhibit R	585
" " S	586
" " T	593
WILLIAM L. DARLING—Recalled:	
Cross-examination, Vol. 2	936–988
Defendants' Exhibit FF	936
Re-direct examination	988–1005

PAGE.

Re-cross examination 1005–1008
Defendants' Exhibit II..... 1005
" " JJ..... 1005
" " KK..... 1005
" " LL..... 1005
Re-direct examination 1008–1016
Re-cross examination 1016–1023

WILLIAM L. DARLING—Recalled for Complainant:
Direct examination, Vol. 6.....3207–3229
Complainant's Exhibit 81..... 3212
" " 82..... 3214
" " 83..... 3221
" " 84..... 3223
" " 85..... 3229
Cross-examination 3229–3233
Re-direct examination 3233–3241
Complainant's Exhibit 86..... 3233
Re-cross examination 3241–3247

HOWARD ELLIOTT:
Direct examination, Vol. 3.....1217–1289
Complainant's Exhibit 32..... 1287
" " 33..... 1287
" " 34..... 1288
Cross-examination 1289–1376
Defendants' Exhibit NN..... 1343
Re-direct examination 1376–1390
Re-cross examination 1390–1420

HOWARD ELLIOTT—Recalled for Complainant:
Direct examination, Vol. 6.....3121–3151
Complainant's Exhibit 79..... 3122
" " 80..... 3122
Cross-examination 3151–3194
Re-direct examination 3194–3207
Complainant's Ex. 80–A..... 3204

HOWARD ELLIOTT—Recalled for Complainant:
Cross-examination, Vol. 7.....3556–3582

LESTER B. ELWOOD:
Direct examination, Vol. 1..... 480–487
Complainant's Exhibit 22..... 483
Cross-examination 487–502
Re-direct examination 502–504
Re-cross examination 504–507

LESTER B. ELWOOD—Recalled: PAGE.

Direct examination, Vol. 2.....1024–1032
Cross-examination 1032–1048
Re-direct examination 1048–1053
Re-cross examination 1053–1059

ALLAN L. FLINN—For Defendants:

Direct examination Vol. 5.....2384–2419
Defendants' Exhibit YY..... 2387
" " ZZ..... 2406
" " 3-A..... 2408
" " 3-B..... 2418
Cross-examination 2419–2511
Re-direct examination 2512–2516
Re-cross examination 2516–2521

H. A. GRAY:

Direct examination, Vol. 1..... 259–275
Complainant's Exhibit 14..... 266
" " 15..... 270
" " 16..... 270
" " 17..... 271
" " 18..... 272
" " 19..... 273
Cross-examination 275–416
Complainant's Exhibit 20..... 274

H. A. GRAY—Recalled:

Cross-examination, Vol. 2..... 592–718
Defendants' Exhibit U..... 594
" " V..... 609
" " W..... 669
" " Y..... 673
" " Z..... 676
" " AA..... 685
" " BB..... 709
" " CC..... 715
" " EE..... 718

H. A. GRAY—Recalled:

Direct examination, Vol. 2..... 905–936
Complainant's Exhibit 28..... 932

H. A. GRAY—Recalled:

Cross-examination, Vol. 3.....1162–1211
Defendants' Exhibit MM..... 1163
Re-direct examination 1211–1216

CONWAY W. HILLMAN—Recalled for Defendants: PAGE.

Direct examination, Vol. 6.....3268–3450
Defendants' Exhibit 3–L..... 3276
" " 3–M..... 3279
Cross-examination 3450–3484
Re-direct examination 3484–3485
Re-cross examination 3485–3553

CONWAY W. HILLMAN—Recalled for Defendants:

Cross-examination, Vol. 7.....3582–4107

CONWAY W. HILLMAN—Recalled for Defendants:

Direct examination 4122–4154
Defendants' Exhibit 3–N..... 4136
" " 3–O..... 4139
" " 3–P..... 4151
Cross-examination 4154–4170
Defendants' Exhibit 3–Q..... 4164

CONWAY W. HILLMAN—Recalled for Defendants:

Direct examination 4243–4250
Defendants' Exhibit 3–V..... 4246
" " 1–Master..... 4246

WILLIAM G. JOHNSON:

Direct examination, Vol. 3.....1657–1700
Complainant's Exhibit 54..... 1659
" " 55..... 1664
" " 56..... 1668
" " 57..... 1671
" " 58..... 1672
" " 59..... 1677
" " 60..... 1682
" " 61..... 1684
" " 62..... 1688
" " 62-A..... 1688
" " 62–B, C, D, E F, G, H..... 1692
" " 63..... 1694
" " 64..... 1697
Cross-examination 1700–1760

WILLIAM G. JOHNSON—Recalled:

Cross-examination, Vol. 4.....2212–2239

WILLIAM G. JOHNSON—Recalled for Complainant: PAGE.
Direct examination, Vol. 6.....3248–3256
Complainant's Exhibit 87..... 3252
" " 88..... 3252
Cross-examination 3257–3266
Re-direct examination 3267–3268
Complainant's Exhibit
Elliott (Johnson) 80-B..... 3256

WILLIAM G. JOHNSON—Recalled for Complainant:
Cross-examination, Vol. 7.....4107–4121

WILLIAM G. JOHNSON—Recalled for Complainant:
Direct examination 4214–4227
Complainant's Exhibit 90..... 4215
" " 91..... 4215
" " 92..... 4216
" " 93..... 4223
Cross-examination 4227–4237
Re-direct examination 4237–4239

MASTER AND COUNSEL:
Discussion 2240–2261

DWIGHT C. MORGAN—Called for Defendants:
Direct examination, Vol. 4.....1762–1970
Defendants' Exhibit OO..... 1833
" " PP..... 1834
" " OO–1, 2, 3..... 1835
" " OO–4, 5, 6..... 1836
" " QQ..... 1838
Cross-examination 1970–2105
Re-direct examination 2105–2135
Re-cross examination 2135–2182
Defendants' Exhibit RR..... 2131
Complainant's Exhibit,
Report to Commission..... 2171
Complainant's Exhibit 65..... 2172
" " 66..... 2172

DWIGHT C. MORGAN—Recalled for Defendants:
Direct examination 2262–2273
Defendants' Exhibit TT..... 2262
" " UU..... 2265
" " VV..... 2265
" " WW..... 2265
" " XX..... 2268

PAGE.
Cross-examination 2273–2294
Re-direct examination 2294–2295
Re-cross examination 2295–2358
Re-direct examination 2358–2362
Re-cross examination 2362–2382

DWIGHT C. MORGAN—Recalled for Defendants:
Cross-examination, Vol. 5..... 2522–2544
Complainant's Exhibit 68..... 2537
Re-direct examination 2544–2554
Re-cross examination 2554–2573
Re-direct examination 2573–2575
Re-cross examination 2575–2607

DWIGHT C. MORGAN—Recalled for Defendants:
Direct examination, Vol. 7..... 4177–4191
Defendants' Exhibit 3-R..... 4178
" " 3-S..... 4178
" " 3-T..... 4182
Cross-examination 4191–4213

WILLIAM C. READ:
Direct examination, Vol. 3..... 1116–1128
Cross-examination 1128–1156
Re-direct examination 1156–1158
Re-cross examination 1158–1162

CHARLES F. STAPLES—For Defendants:
Direct examination Vol. 5..... 2607–2697
Defendants' Exhibit 3-C..... 2614
" " 3-D..... 2633
" " 3-E..... 2653
" " 3-F..... 2655
" " 3-G..... 2676
" " 3-H..... 2678
" " 3-I..... 2682
" " 3-J..... 2685
Cross-examination 2697–2969
Complainant's Exhibit 69..... 2756
Re-direct examination 2969–2978
Re-cross examination 2979–2987
Re-direct examination 2988–3003
Defendants' Exhibit 3-K..... 2988
Re-cross examination 3003–3038

CHARLES F. STAPLES—Recalled for Defendants: PAGE.
Direct examination, Vol. 7.....4239–4241
Defendants' Exhibit 3–U..... 4241
Cross-examination 4241–4243

JOHN D. STRYKER:
Direct examination, Vol. 1..... 454–468
Complainant's Exhibit 21..... 461
Cross-examination 468–478
Re-direct examination 478–479

McNEIL V. SEYMOUR:
Direct examination, Vol. 3.....1591–1592
Cross-examination 1593–1598

OSCAR L. TAYLOR:
Direct examination, Vol. 3.....1420–1430
Cross-examination 1430–1434

JOHN J. WATSON:
Direct examination, Vol. 1..... 507–514
Cross-examination 514–534
Defendants' Exhibit O..... 528
Complainant's Exhibit 23..... 513

THOMAS YAPP—For Defendants:
Direct examination, Vol. 7.....4171–4177

UNITED STATES CIRCUIT COURT,

DISTRICT OF MINNESOTA,

THIRD DIVISION.

(In Equity.)

DAVID C. SHEPARD,

Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, GEORGE T. SIMPSON, IRA B. MILLS, CHARLES F. STAPLES, CHARLES E. ELMQUIST, E. A. EVARTS, O. J. WHITEMAN, J. RUMSEY REEVE, ACHILLE MICHAUD, CHARLES MICHAUD AND ADOLPH MICHAUD,

Defendants.

APPEARANCES:

HOW, BUTLER & MITCHELL,
Solicitors for Complainant.

EDWARD T. YOUNG, Attorney General,
THOMAS D. O'BRIEN and EDMUND S. DURMENT,
Solicitors for members of the Railroad and Warehouse Commission, et al.

VOLUME 3.

CHAS. E. OTIS, Master.

GEO. N. HILLMAN, Reporter.

FEDERAL BUILDING, St, Paul, Minn., Thursday, October 1, 1908, the hearing was resumed at 10 o'clock A. M.

WILLIAM C. READ,
sworn on behalf of Complainant, testified:

By Mr. How:

Q. Will you state your name, your age and your residence, Mr. Read?

A. William C. Read, fifty years old; live at 449 Portland avenue, St. Paul, Minn.

Q. What is your busniess?

A. Real estate and loans.

Q. How long have you been in that business?

A. About twenty-three years.

Q. And at what locality?

A. In St. Paul entirely.

Q. What is the nature of that business and has been the nature of it?

A. It has been confined to buying and selling, and making loans on St. Paul city real estate; never any other.

Q. In the course of that business have you kept track of valuations of St. Paul real estate, both which was called inside and outside property?

A. Yes, sir, I have tried to.

Q. Do you consider that a necessary part of your qualification for your business?

A. I do.

Q. What experience have you had in the valuation of property in St. Paul?

A. Well, the same general experience that any man would have who for over twenty years handled nothing but city real estate.

Q. That experience has been constant, you have been constantly engaged in it?

A. Yes, continuously; I have never dealt in any outside lines; I have always confined my work to city property.

Q. You mean, by that, property within the limits of the city of St. Paul.

A. I do.

Q. You were employed, together with Messrs. Watson and Taylor, to make a valuation of Northern Pacific properties lying within the limits of St. Paul. Do you remember about when that employment was made?

A. It was in the latter part of September, I think, 1906, or about the 1st of October.

Q. Who employed you?

A. A committee of railroad men; we were invited to meet these gentlemen in Mr. Cooper's office in the Northern Pacific building. I do not think any particular one employed us.

Q. Were you advised for what purpose the valuation was to be made?

A. No, sir.

Q. Were you advised as to whether it was desirable on the part of the Railway Company that a high or a low valuation should be made?

A. I was not.

Q. Do you know whether or not any of your committee were?

A. As to the kind of valuation?

Q. Yes.

A. I do not, but I do not think they were.

Q. Do not think they were advised?

A. No.

Q. Now, you undertook and proceeded with that work of valuation of the Northern Pacific and other properties of railroads?

A. Yes, sir.

Q. What method did you pursue, you and your associates?

A. We retired to a room on the second floor of a building over on Fourth street, where there was a large table and spread the plats out on this table, and studied the geography of the situation, and talked, discussed the problem before us; I think it was practically two days before we made any figure at all. We went over the whole situation, considered all the sales, all the transactions that we knew of or that had happened in any of our three offices, discussed the recent condemnation proceedings, and, realizing that it was a big problem, as I say we talked I think for fully two days before we did anything in the way of making prices.

Q. You say for two days; do you mean for a few minutes or an hour or two each day, or did you give your undivided time to it?

A. No, two of the committee were trying to get away on a trip, and we worked at it very industriously. We gathered in this room about 9 to 9:30 in the morning; we stopped all of our other business, and we worked until luncheon time, returned immediately after lunch, and worked until closing time; and we did that for five or six days; we put in the entire working day on this proposition.

Q. Not only the two days before you made any valuation whatsoever, but some subsequent days?

A. Yes.

Q. What did you take into consideration in fixing the valuations which you did fix, what elements or factors?

A. Well, we took into consideration the fact that here was a large body of land in a continuous ownership, that it lay contiguous to railroads, and the topography of the town entered into our consideration of the question. We took all the elements we could reasonably consider.

Q. Did you have any recent transactions in adjacent prop-

erty or properties similarly situated, in your opinion, before you?

A. We had some. There had not been a large number of transactions, especially sales; there had been some leases, some condemnations, some sales. We took those into consideration and applied them as far as we could.

Q. I show you Complainant's Ex. 30—Cooper, which I think is a copy of the report (the first part of it) made by you and your associates, and is in evidence in this case as such. I don't seem to have the original before me. The latter part of it appears to be your valuation applied to the number of square feet in the respective tracts valued and carried out to the total as compared with the valuation put upon it by Mr. Cooper for the purpose of return to the State in behalf of the Company, applied and carried out to its total. That is the fact with regard to that exhibit is it not?

A. Yes, sir, as far as I know. We only placed, you understand, a price per square foot; we did not make any extensions.

Q. Yes, I understand. You had before you plats indicating the area within the city limits owned by the Northern Pacific Company?

A. We did.

Q. And you applied a price per square foot to the various districts comprised within that area?

A. Yes, sir.

Q. Who made those districts for the purpose of applying that average price per square foot?

A. Our committee.

Q. How were those districts determined upon?

A. They were laid out in an arbitrary manner, but in order to as nearly as possible divide the property of a similar nature so that we might equalize the value placed on each district to the best advantage.

Q. Ex. No. 30 shows your valuation of the property owned

by the Northern Pacific between Broadway and Pine streets at $8 per square foot. Where is that property located?

A. That is the property where the general offices of the Northern Pacific building stand, facing on Broadway and Fourth and Prince streets.

Q. It abuts in the rear upon trackage property?

A. Yes.

Q. Owned by the Northern Pacific?

A. It connects with it.

Q. What, if anything, in the way of transactions, either by sale, leases or condemnation proceedings, did you have in mind to assist you in making that valuation of $8 per square foot?

A. There was a lease with which we were familiar, made by the Northern Pacific to Nelson Morris & Company, on a lot on Broadway, I think lot 4, block 44.

Q. And how does that lie as compared with this property?

A. Well, that is on Broadway and it is upon the property.

Q. How near to this property?

A. There is just one block between. They made a lease on that lot, back in 1900, I think, based on a valuation of $25,000, at six per cent interest; the lease runs fifty years and has a revaluation clause in it after the first ten years for every succeeding five years. If that was capitalized on a basis of four per cent (and a fifty-year bond would easily sell for that) it would make the valuation of that lot $37,500, or nearly $8 a square foot. We didn't consider, though, any transaction of that kind as controlling. The condemnation for the opening and widening of Sibley street had been concluded only a month or two before we were called into this work. That would apply in a certain way. There was a lot 50x177 feet, containing about 8850 square feet, that was condemned by the city for the opening and widening of Sibley street, and

$79,000 for the land alone was paid for that property.

Q. Exclusive of buildings upon it?

A. I say for the land alone. They paid something like $4,500 for buildings, and $1,000 for leasehold in addition to that.

Q. What would that amount to a square foot?

A. That amounted to practically $9 per square foot for the land. That we didn't allow to influence us except as far as we might apply it. It was rather a notorious case and well known.

Q. Did you know of any other transactions in that neighborhood that you took into consideration?

A. Well, none especially that would apply to that one division. A sale that was very well known among real estate men farther down was one made by the Kenny Brothers, John and Terrence Kenny, to the gas company. That was made in 1905. That sale was lots 6, 7 and 8, block 46, Kittson's addition.

Q. And that is located how near this property?

A. That is very close to the next division, across the street.

Q. That is, from your No 2 on Ex. 30, being the property between Pine street and Willius street?

A. Yes, sir.

Q. Very close to that?

A. Very close to it, yes; just across the street.

Q. What was that property sold for?

A. $50,000 for the three lots.

Q. Comprehending how many square feet?

A. About 15,000 square feet. Those lots have not trackage, no access to tracks, and never can have until the gas company plant is moved. I say we knew of that sale, and just simply applied it as far as we thought it would go or be applicable.

Q. There were some buildings upon this Kenny property?

A. There was nothing allowed for the buildings nor the machinery. He had a plant on it.

Q. He was allowed to remove those?

A. He was allowed to remove those, and it was so specified in the contract. I have read the contract recently.

Q. Are there any other transactions?

A. Well, down in block 52 there was one transaction that was well advertised, what we call the Abbott lot.

Q. And that is near which district of your valuations?

A. That is near the third division.

Q. From Willius street—

A. From Willius to Brook.

Q. —to the Sixth street viaduct?

A. Yes, sir; the Abbotts owned a lot there 50x111 feet, with a factory building on it, a planing mill. That was condemned, I think in 1903 or 1904, and we remembered that because it was given a good deal of prominence at the time. The award in that case was $20,833.33. The Abbotts were allowed to remove the buildings without any expense. That would be about $3.75 a square foot. We appraised the property in that vicinity at $2.50. We didn't consider that price as fixing a price for the whole district, by any means.

Q. Now, as you go along, won't you recite, if you have any in mind, any other transactions that assisted you in any of these other districts?

A. It would be impossible for me to justify the valuations placed on this tract of land by actual transactions. There were not very many, and we simply used those that we knew of and could apply. We didn't try to find sales, nor any other transactions, that would fit all these cases.

Q. What has been the condition of the real estate market in St. Paul for the last ten years?

A. There has not been any what you would call fixed market value to any of our property. The market has been flooded

by sales resulting from foreclosures, from banks that have failed and from estates that have failed. All of those incidents have helped to keep the market in an unsettled condition.

Q. There have been a good many sales of property within the last ten years?

A. Yes, but I think the majority of them have been made by the mortgagee, who secured the property by foreclosure, or sales that were made by the banks that failed.

Q. Resident or non-resident mortgagees?

A. Generally non-resident—in my office.

Q. And what has been your experience with regard to their desire to keep the property?

A. They have been anxious to dispose of the property and have been ready to accept any price approaching the amount they had involved in their original loans.

Q. And do you know of many such transactions actually having been made by foreign mortgagees?

A. Yes, sir, I have disposed of, I should say without being able to estimate closely, over a million dollars worth myself. I have disposed of over $300,000 worth, I know, principally inside property, for the New York Life Insurance Company. I think the company lost money on nearly every piece. That was property the company had acquired by foreclosure.

Q. And what was the policy of the company with regard to holding it or disposing of it, even at a sacrifice?

A. My orders were to sell the property; and, if I secured a price close to what the company considered it worth, why they almost invariably accepted the offer.

Q. When this valuation report was made up and signed and transmitted by you and your associates to the Company, what did the figures set forth in it represent, with regard to your judgment as to the value of the property as set forth in it?

A. A fair and reasonable value on the property, what we thought the property might reasonably be reproduced for or purchased for.

Q. Did you take into consideration any improvements on the property?

A. No, sir.

Q. You considered it as a vacant, continuous tract, as it was shown on the plats?

A. We did.

Q. You took into consideration all other present conditions, the existence of other railways adjacent to it?

A. Yes, we did that; we thought we had the right to.

Q. What would be your judgment at the present time with regard to that valuation, if you were asked to consider it and make any amendment to it that you saw fit?

A. I do not think that I would change it; at least, not much. I surely should not change the down-town property. I mean I think that price is about as reasonable now as then; there hasn't been very much change in the market, except that we are gradually getting a better city and prices are stiffening and hardening all over the inside limits of our city.

Q. I think perhaps you overlooked the Robbins condemnation. Are you familiar with that?

A. The Robbins condemnation was out near the Transfer grounds.

Q. Yes. Had the Northern Pacific any property which you valued near that and similarly situated?

A. That was very recent; we hadn't that before us.

Q. Well, what have you to say with regard to that condemnation as justifying any valuation that you made?

A. Well, if isolated transactions justify any price, that price would be quite important, but I don't consider that those transactions fix values for a district. That was a case where

a jury gave Mr. Robbins over $13,000 for four-tenths of an acre.

Q. How much a square foot is that? Do you know whether that is a higher valuation or a lower valuation than the valuation which you put upon property similarly situated in that neighborhood?

A. The property of the Northern Pacific does not extend down that low, but that is more than we put on any property up there. The property of the N. P. doesn't extend that far south.

Q. Do you know of any transactions since you made this valuation and submitted it that in your opinion justify your valuations of any of these tracts? Have you any in mind?

A. Well, I have recently tried to buy some property in Kittson's addition, down near this district; very close to it, in fact.

Q. It is near the district in which Nos. 1, 2, 3 and 4, and perhaps 5, are situated?

A. Yes.

Q. And that is nearly half of your total valuation, perhaps a little more than half; yes, more than half your total valuation, the first five districts?

A. Yes. If you want to know what people ask down there and what my efforts to buy have been, I can very easily tell you.

Q. I should like to have you tell.

A. I should like to say that this work was not done for this occasion, because I have been trying to make a sale there. Lots 5 and 6 in block 29, that is on the corner of Broadway and Sixth, those lots have no trackage.

Q. And that is how near to any of this Northern Pacific property that you valued?

A. It is here within two blocks, say; those lots are held at $50,000; that is $5 a square foot. I am not sure that I can

get them at that, but that is a working price that Mr. Wensell, their attorney and who is agent for the property, has given me. Lots 1 and 2, block 44—they are on Sixth and Pine—contain about 10,000 square feet; those lots are held at $5 a square foot.

Q. That is how near?

A. There is one block between that and the Northern Pacific main tracks.

Q. They are situated in which district?

A. That would be in the same tier of blocks that the Northern Pacific general office is.

Q. District No. 1?

A. Yes. Lot No. 4, block 43, is held at $5 a square foot. That is in the same tier of blocks with our division No. 2.

Q. From Pine street to Willius street?

A. Yes. Lot No. 3 in block 43 I could not get a price on; that belongs to the Northwestern Improvement Company. Lot 2 I succeeded in getting a price of $12,500. That is in block 43. Lot 1 in block 43 is held at $20,000. That lot, by the way, is leased for $900 a year for ground rent. That would be (at $20,000) $4 a square foot. I have not been able to shake those prices down a particle. Lots 3 and 4, block 45, at the corner of Fifth and Broadway—

Q. That is within a block of No. 1 on Ex. 30?

A. Yes, sir; those lots are held at $50,000 and held very stiff. I have labored with that individual, but he won't come down a particle. Now, there are one or two other scattering lots in there I did not look up, because there was no chance to get the tract I wanted of 100 feet because either the gas company owns the next lot or the Northwestern Improvement Company owns it, and I knew that neither of them would sell.

Q. Have any of those lots that you have mentioned, trackage facilities?

A. Some of them have. Those lots in block 43 have trackage in the rear.

Q. Through an alley?

A. Yes; the lots in block 45 have not, and for the simple reason that the tracks are stopped at John street by the gas company plant, which occupies all of block 47 of Kittson's addition.

Q. You were trying to acquire a hundred feet square there?

A. I was.

Q. In the light of your experience in trying to acquire 100 feet square in that locality, what is your opinion with regard to the value of the property in Nos. 1 to 5 inclusive, upon your exhibit, at the present day?

A. I think the prices were very reasonable and as low as I should care to put them.

Q. Mr. Read, you considered, of course, the value of these properties for railway purposes; now what, if any, influence did the peculiar topography of the city of St. Paul have upon you in that consideration, and how did you apply any influence that it did have?

A. Well, the topography of St. Paul as to railroad terminal properties is rather unique and peculiar, because for easy access to the business district you must almost necessarily enter that district along the narrow bench between the Mississippi river and the bluffs or through the valleys of Phalen creek and Trout brook. All of those routes lead into this area or plateau where the railroad yards are, and it lies in rather a restricted position north of the river, west of Dayton's bluff and east of the jobbing center. It converges about Fifth street; Phalen creek goes off towards the northeast, and Trout brook runs on northerly. The district is very restricted and cannot be enlarged without very heavy expense. We took that into consideration. I can't say just what percentage in our minds we placed on the property in consequence, but it

did have its effect upon us in arriving at the values.

Q. Does all the available property in that locality covered by your districts 1, 2, 3, 4, and 5 seem to be occupied or owned by railway companies?

A. Not all of it, but very much the larger portion.

Q. The most available property is?

A. Yes, sir.

CROSS-EXAMINATION.

By Attorney General YOUNG:

Q. It is true, is it not, Mr. Read, that you and the other commissioners who co-operated with you in making this valuation, also at the same time valued all the other railroad property inthe city owned by the other railway companies?

A. Yes, sir.

Q. And in valuing the property of the other companies, you used substantially the same basis for estimating or computing the value that you did in the Northern Pacific case?

A. As far as they would apply. The situation is different with some of the roads.

Q. And it is also true, is it not, that the relative value between the property owned by the other railway companies and the adjacent privately owned property was reached in substantially the same way?

A. Yes, sir.

Q. And it is also true, is it not, that that relative value is as accurate in the case of the other companies as in the case of the Northern Pacific?

A. We tried to be fair in all of them.

Q. Now this two-day period that you say was employed by yourself and your associates by way of consultation and preparation for your work was a period used in preparation for doing the work for all of the companies?

A. Yes, sir.

Q. Now, what was the fundamental basis, if you can state it concisely, that you employed after all of your consultation and computation and estimates and everything else that you took into consideration in your consultations, your fundamental basis of value of this property?

A. We considered all of the elements that go to make up value from every point of view, and gave it as our best judgment the prices we applied here. We considered what such a piece of land could be reasonably acquired for in case the Northern Pacific tracks were not there.

Q. Well, did you consider what the land could be sold for if the Northern Pacific tracks were taken away from there?

A. Yes; that was one element of getting at the value.

Q. As a matter of fact, Mr. Read, the real basis of value of any tract of real estate is what would it bring if placed upon the market under ordinary circumstances, what it is worth in the market, in other words, is the test of its value, is it not?

Mr. HOW: I deny that rule of law. I object to the question as not properly stating it.

The MASTER: The Master is not passing on it. Answer the question, if you can.

A. It is one of the tests.

Q. What other merchantable value has real estate except what could be got for it in the market?

A. Its income is one of the best tests.

Q. Well, isn't that one of the things that is taken into consideration in determining its merchantable or commercial value?

A. Yes, sir; but there are times when you could not sell a good income-bearing piece of property for any reasonable price.

Q. And on all such occasions you think that an expert witness has a right to come into court and say what he thinks it ought to bring and not what it would bring in fact; is that

the idea?

A. Using our best judgment in placing the prices, all those things taken into consideration.

Q. Let me understand you: Are you testifying to what you think the land ought to bring or what you think it would in fact bring?

A. Well, we are testifying to what we think the land is reasonably worth.

Q. Well, answer the question. I think that is simple enough.

Question repeated.

A. No, I didn't understand you, General, excuse me. We put prices on there that we thought this property would reasonably sell for if it had to be disposed of.

Q. Now, for what purpose did you have in mind that it should be sold, for railroad purposes?

A. That would be the highest use, the most available use to put the land to, and we naturally had that in mind as one of the principal uses that it might be put to in case of a sale.

Q. In the vicinity of most of the land included in your first five districts in the case of the Northern Pacific, there are other railroads, are there not?

A. Yes, sir.

Q. And in valuing the land of the Northern Pacific you valued it with reference to the existence there of the other railroads?

A. We did.

Q. Well, did you have in mind about the value, if any, that the land had acquired by reason of the existence there of the Northern Pacific?

A. No, sir.

Q. But in valuing the lands of the other railway companies in the vicinity you gave them a value which arose out of the existence of the Northern Pacific track?

A. Yes; we thought we had that right.

Q. So that in each case, in essence and effect, the property was given a value which arose out of the existence of the railroad there, did it not?

A. Of the other railroads.

Q. Well, the other railroads being in the immediate vicinity gave practically the same value to the land, so far as nearness of a railroad is concerned, as would arise out of the existence of the Northern Pacific track itself?

A. Yes, but we—

Q. Did you consider at all what this land would be worth on the theory that there was no railroad there?

A. No railroads you mean?

Q. Assuming, for example, that the Northern Pacific was the only railroad in consideration and that it hadn't yet been built, did you take that view of it at all?

A. No, sir.

Q. You spoke about the topography of the city as being one of the serious things which you considered, and especially with reference to the access to the business district, and that accessibility to the railroad district as it is now situated with reference to the business district was one of the bases of the valuation. As a matter of fact, Mr. Read, the business district was located in its present site because of the railroad district, was it not?

A. It was located before my time, sir.

Q. The business district built up around the railroad district after the railroad was located, did it not?

A. I couldn't answer that. The business district was built up and the railroads, I imagine, along together.

Q. The location of each being influenced to some extent by the other?

A. Yes, sir.

Q. Originally there was no reason why the railroad center

could not have been located out on University avenue on the flat, was there, or some other parts of the city?

A. No, my understanding has been that much of the jobbing district was there before the railroads came there, and that the railroads naturally got into the town the best way they could.

Q. Some of the jobbing district was located on account of the location of the river, originally, I suppose?

A. Yes, sir.

Q. But the jobbing district, as it is known to-day didn't exist in the days of river navigation, did it?

A. I couldn't answer that, sir.

Q. How long have you lived in the city?

A. Twenty-three years.

Q. Do you know when the Northern Pacific was built?

A. No, sir, I do not know when it was.

Q. Do you know when any of the railroads were built that now occupy the real estate in the first five districts of your subdivisions?

Mr. HOW: You mean the St. Paul part of them, the part we are considering?

Attorney General YOUNG: Yes, the part in St. Paul.

A. No, sir, I couldn't tell you.

Q. Do you know which of the railroads was first located in the so-called railroad district in the city now?

A. I have understood it was the St. Paul & Duluth, now property of the Northern Pacific.

Q. And you don't know the order in which they were located?

A. No, sir, I do not.

Q. It is no doubt true, is it not, that the location of the principal trunk lines in that vicinity induced the other roads to also make that their center?

A. Yes, and the natural topography of the ground had a

great deal to do with it.

Q. As a matter of fact, the land in this city occupied by the railway companies was utterly useless for any business purpose until it was taken up and improved for railroad purposes by the railway companies, was it not?

A. No, sir.

Q. What was the character of the land, in the first place, down in the railroad region now?

A. Well, when you get down below Brook street it was more or less swampy there. This property in Kittson's addition was like the other property in that neighborhood.

Q. Do you know what was the original character of the property down about the union station?

A. No, sir.

Mr. HOW: You mean before railroads came here?

Attorney General YOUNG: Before the railroads took it up and improved it.

Mr. HOW: Before he was born, wasn't it, pretty near?

Mr. DURMENT: Well, he says he is fifty.

Attorney General YOUNG: I don't think it was before I was born, and I don't think I am any older than he is.

Mr. HOW: Well, I don't know. I have been here longer than he has.

Attorney General YOUNG: I have been told that the duck-shooting was good down there originally.

Q. You would not be able to say whether or not that property would have any value whatever, were it not for the existence of these several railroads there?

A. If there were no railroads in St. Paul and the town was not what it is, no, I couldn't estimate a thing of that kind.

Q. You don't know what any of the right-of-way of these railways that you have undertaken to value cost in the first place?

A. No, sir, I do not.

Q. Nor when they were acquired?

A. No, sir.

Q. Nor you don't know how much the property adjacent to these railroads has increased in value since the railroads were located there?

A. Only in a general way.

Q. It would be a fair proposition, would it not, in valuing this railroad property, to ascertain what it was worth and what adjacent property was worth at the time that it was acquired and then to apply to the railroad property the same ratio of increase in value as is shown in the value of adjacent property?

A. It is very difficult to apply any horizontal ratio in appraising property. The conditions surrounding it must always be taken into consideration, and they vary so I hardly think you could apply any—

Q Well, is it your opinion that railroad property ought to be given a higher ratio of increase than that of similar property adjacent?

A. No, not everything considered.

Q. Railroad property doesn't change hands in the ordinary commercial way?

A. No.

Q. Naturally; so that you can't form any opinion as to the value of railroad property from a knowledge of either sales or offerings for sale of that specific property, can you?

A. No, sir.

Q. There is, therefore, no way to get at the value of railroad property at a time remote from the period when it was acquired, except by applying to it the ratio of increase in adjacent property, is there, or the market value of adjacent property?

A. That is only one of the ways of getting at it, not the only way.

Q. It is not the only way. Well, would you kindly tell us what the other ways are?

A. The sales of adjoining property are simply one assistance to any man in making an appraisal of this kind. You have to take into consideration so many different elements it is very hard to enumerate them; but as one, a large body of land, in a continuous ownership, (which is a large element) that is worth more, in proportion, than a lot of scattered lots although contiguous in the same territory.

Q. Why is it worth more? In view of the fact that it never is going to be put on the market, probably?

A. Because it becomes more available when you segregate it into a larger tract.

Q. How is that?

A. When you seggregate a lot of small pieces into a large tract it immediately becomes more available.

Q. Yes, but suppose it was property not occupied by a railroad which could be devoted to any of the purposes for which land may be adapted—

A. Yes.

Q. —don't you think it would be more fair to consider those things with reference to that land than with reference to railroad property which is not susceptible of sale or of change of ownership or of change of occupancy?

A. Well, we didn't take that particular point into consideration, as I remember it. We were told to take this plat as it was given to us and appraise it as if the Northern Pacific railroad was not there.

Q. But all the other roads were?

A. Yes.

Q. And then to take the property of the other road and appraise that as though that road wasn't there, but the Northern Pacific was; is that the idea?

A. Well, we were not told that in so many words, no.

Q. Well, let me understand, finally, if that is—

A. Well, I say we took that into consideration; we were given no instructions about that phase in the appraisal.

Q. Well, as a matter of fact, reduced to a nutshell, the basis on which you proceeded was that you took out the road whose lands you were appraising and imagined that it was not there but that all the other roads were, in each case?

A. You couldn't get away from that.

Q. Well, I don't care whether you could get away from it or not, that isn't what I ask you, is that what you did?

A. Yes, that was one of the elements of value, the fact that it lay alongside those other roads.

Q. It was of decided advantage to the railroad property, then, in each case, that you were appraising them all together?

A. It was of great assistance to us.

Q. In getting the maximum value?

A. In getting any value.

Q. There is one statement you made a moment ago to which I wish to recall your attention. You stated, I believe, that in fixing your value upon this railroad property you considered it was an advantage, and therefore an added element of value, that there was a large tract, which presumably could be put upon the market all together, if the railroad were not there; is that true?

A. Yes, that is right.

Q. Now, isn't it true, Mr. Read, that a large tract, offered in that way, would sell for less per square foot than the same amount of land offered in separate tracts, sold by the lot?

A. No, sir.

Q. As ordinary property is sold?

A. No, sir.

Q. You don't think that a wholesale proposition would apply at all? If you were going to apply to this land, Mr.

Read, the idea that it is contained in a large tract or constitutes a large tract, would it not be necessary or just to also consider that if it were to be offered for sale it would be offered in bulk?

A. Yes.

Q. And you want to testify that if offered in bulk, it would bring more per square foot than if offered in separate tracts for ordinary business purposes?

A. Yes, sir, I think decidedly more.

Q. There is a disadvantage, then, in retailing land, is there? Lands sold at wholesale bring more than when sold at retail?

A. It is of great advantage in having a large body of land whether it is retail or wholesale.

Q. Well, that land couldn't be sold in bulk for any other purpose than railroad purposes, could it? If it was to be sold for business purposes it would have to be subdivided and sold in small tracts?

A. Well, the owner of that land, if he were ordinarily sane, would not attempt to retail it in several lots, because he would see at once that that was not its highest and most available use.

Q. Well, what would he do with it—turn it into a farm?

A. No, sir; he would sell it to another railroad or to some corporation.

Q. Oh.

A. Some other purchaser who would use it.

Q. He would sell it for railroad purposes to some other railroad or corporation, would be?

A. There would be no difficulty in disposing of it, sir.

Q. Well, for railroad purposes, is that what you had in mind?

A. For that or similar purposes, yes; that would be a most natural use to put it to—railroads.

Q. Suppose there were no Northern Pacific railroad there and none was intended to be built; if you are going to take it out of your mind in one view of the land you must leave it out until you get through valuing it, and you must not simply take it out and then consider that it is immediately going to be replaced there and that this land would be necessary for the purpose; with the Northern Pacific railway out of there and with the construction of such a company not in contemplation, what could the land be used for?

Mr. HOW: That is objected to as immaterial and having nothing to do with the case.

Attorney General YOUNG: Well, he says it is necessary for railroad purposes; I want to know how it is necessary.

The MASTER: Objection noted.

A. Do you mean the construction of no other railroads in contemplation?

Q. Well, you don't know of any other, do you, going in down there? Are you going to imagine one?

Mr. HOW: That is objected to as immaterial. It cannot furnish the Master or the Court or anybody any assistance in determining the value of this land to know what the witness' judgment of its market value is if it can't be used for the best purposes for which it is available, and that is what the counsel is trying to adduce, whether it is used for residence purposes or any purpose excepting the purpose for which it is particularly valuable.

Attorney General YOUNG: As I understand it, by way of explanation, the market value of land is the price it will bring for any use for which it is adapted and not the price that it will bring for some special purpose that the witness may have in mind. Now, if that land was wholly unoccupied by a railroad and the owner had to put it upon the market, what could he get for it?

Mr. HOW: But the ultimate fact to be proved here is the

present cost of acquisition of this property for railway purposes.

The MASTER: Well, we have had that called to our attention quite often in the course of these examinations. I think that the witness may properly answer with respect to every phase of the case. At least, I can't control the testimony in that regard.

A. That question is so long I can't remember all of it, General. If you will shorten it up a little—

Q. Well, I don't know that it could be shortened up very much; and yet, to make it clear,—you say when you valued this land you considered that there was no railroad on it, did you not?

A. Yes.

Q. Well, did you in the same connection consider that its use for a railroad that might be immediately built upon it—

A. We considered that—

Q. Or what did you consider with reference to a railroad?

A. Well, we considered that the most available use to which the property might be put, and we naturally—at least I did, I don't want to speak for the others what was in the minds of the other men altogether—that the most available use for it would naturally be railroad purposes, and that the idea that it could be used for that better than for any other purpose was one element in fixing the values; not the only one.

Q. And that fact caused you to value it higher than you otherwise would have valued it?

A. No; we tried to put a fair and reasonable price on it; we were not trying to get a high price.

Q. You mean you could have made it higher, is that your idea?

(Witness laughs.)

Q. You managed to get it higher than the Railroad Company itself now claims it is worth.

A. They don't know much about the real estate business.

Q. So you did a pretty good job on it, as far as that is concerned.

Mr. DURMENT: You wouldn't have valued it at as high a figure as you did had it not been available for railroad purposes, would you?

WITNESS: I don't think we would, no.

Q. And you also considered, did you not, that it was absolutely necessary for railroad purposes and that the railroads would have to have it?

A. No.

Q. And that that was the only land that they could get?

A. We didn't consider that. We considered the fact that there is a limited amount of land suitable for railroad purposes.

Q. Well, I don't know that I have a very definite conception of that mental state that you were in when you considered that the railroad was not there in fixing this value if you suggest now that you had in mind the idea that it would have to come there and that this was the land that it would have to have.

A. No, we didn't think that.

Q. What was it you did have in mind with reference to the existence or non-existence of this railroad on that land at the time you valued it?

A. Well, we tried—at least I did— to imagine this body of land lying there, no railroad on it, what we would naturally or reasonably have to pay for such a strip of land or body of land if we had to go in the market and acquire it.

Q. For what purposes?

A. Well, for any purposes requiring a piece of land of that kind.

Q. What purpose did you have in mind as needing a tract of land of that kind?

A. A railroad company would be the natural user of such a piece of land.

Q. You didn't consider at all, then, what the land would bring if it was subdivided into different lots and sold in that way?

A. We didn't consider subdividing. Part of it would not be so handled at all.

Q. You say it couldn't be so handled?

A. It would be ridiculous to cut up a piece of land like that and try to retail it out into single lots.

Q. You couldn't in that way get at any such value as you reported for it, could you?

A. For a part of it you could not; it would destroy the availability of the land the minute you divided it up.

Mr. DURMENT: Availability for what?

WITNESS: For uses of practically any kind.

Q. Do you mean that the land is such that it is of no value for any other than railroad purposes?

A. No, I don't mean that.

Q. What do you mean?

A. Well, I mean that if you attempted to sell a right-of-way in single lots, it would be a very foolish way to handle it. It is worth more as it is to any one having use for a body of land of any such size.

Q. Suppose you were the owner of that tract of land and you wanted to get your money out of it, and there didn't any railroad come along and offer to buy it of you, how would you sell it?

A. A good part of it could be very easily disposed of. The larger part of this business district might be handled that way.

Q. For what purpose?

A. Well, it could be sold for—You are doing away with all the railroads now? If you leave your tracks up those

alleys, as it is there in Kittson's addition, that would remain very good warehouse and wholesale property.

Q. Is there any particular pressing demand for warehouses and other wholesale property down there now?

A. Yes, there is; we are very short on trackage property.

Q. How long do you think it would be befoe the demands of this city would require all that land for warehouse purposes or wholesale purposes, either?

A. I couldn't estimate that, sir.

Q. It would take a good many years, wouldn't it?

A. That is mere speculation; I couldn't—

Q. You don't know of any demand that would absorb that land for any such purpose as that within the near future?

A. I only know, what I have stated, that the situation as far as trackage property is concerned is rather a serious one in the city at present.

Q. What do you mean by that?

A. It is very difficult to secure inside business property with trackage facilities, connections with railroads. That is what is driving a great many of our enterprises to the Minnesota Transfer.

Q. That is a more advantageous shipping point; it reaches all the railroads,—the Minnesota Transfer does?

A. Yes, sir.

Q. The Minnesota Transfer is a sort of a railroad clearing-house and is the natural shipping place for the Twin Cities, isn't it?

A. Yes, it is very convenient.

Q. And that is why enterprises are going there, is it not?

A. Well, they are going there also because they can't get facilities down town.

Q. They can't get facilities for any such prices as they can get them for out there?

A. Yes.

Q. You say you considered in the main, in valuing these lands, what the railroad would have to pay for them if they had to acquire them now. In other words, you gave a valuation of them on what might be called a railroad basis, for re-acquisition, in case they didn't own them?

A. What any purchaser might have to pay.

Q. Well, you assumed that any purchaser would have to pay just as much as the railroad company, and you made that the primary basis for the acquisition of those lands—their acquisition for railroad purposes?

A. Yes. Well, we figured what any buyer of that quantity of land would have to pay; any buyer (not only a railroad but any one) going into the market and buying that large tract of land would necessarily have to pay, what we thought as a fair price they might acquire it for.

Q. But you did proceed on the theory that the prices you fixed would be as large as a railroad company would have to pay in acquiring them?

A. Yes, we thought the price would be reasonably what they or anybody else would have to pay.

Q. But you figured that anybody else would have to pay just as much as a railroad company; that was the basis on which you proceeded?

A. Yes, anybody gathering together that body of land, we figured that that was about what it would cost them.

Q. And you put it at a higher price than the ordinary market value of land sold in isolated tracts?

A. We did, yes.

Q. I suppose you mean what it would cost the Railroad Company to acquire the land, at the time you valued it or within a reasonable time thereafter?

A. Yes, we were valuing it as of 1906.

Q. As a matter of fact, all values in this state were at what might be called the crest of the wave of prosperity in 1906,

were they not?

A. No, it didn't apply to real estate. There has never been very much "crest of the wave" in that.

Q. As a matter of fact, taking the state as a whole, it has never enjoyed such a period of prosperity as 1906 and two or three years previous, has it, and never has enjoyed such a demand for real property?

A. That has not affected real estate, I am sorry to say.

Q. Where—here in St. Paul?

A. In St. Paul.

Q. It affected real estate everywhere else in the state, didn't it?

A. It affected farm lands through the state; farm lands have been on quite a boom.

Q. Many farm lands trebled in value, didn't they, during that period?

A. Well, I am not in that business; I only know from general report.

Q. But didn't I understand you to say in your direct testimony that values in St. Paul, notwithstanding that boom in rural lands, were still below a value that had been placed upon them some years ago, so that mortgagees that were now selling property acquired under mortgages had to sell at a loss?

A. I stated that I had disposed of a great deal of property in the past five or six years or longer (I have forgotten the period I named) for mortgagees at a loss.

Q. Well, doesn't that depend, Mr. Read, entirely on the part of the city where that property is located?

A. No, not with an Eastern holder. They are anxious—

Q. I am not talking about Eastern holders, I am talking about facts. Isn't it entirely a matter of where the property is located as to whether it is worth less now than it was in the past?

A. Yes, some parts of our city have appreciated in value.

Q. And property on Third street, for instance, a large portion of Third street has depreciated?

A. Upper Third street, yes, the old part.

Q. And undoubtedly in other locations the growth of the city has grown away from this property and therefore it has depreciated, while other property has greatly appreciated, hasn't it?

A. There have been such changes. Those conditions always exist in any city.

Q. I was going to ask that very question: Isn't it true that such conditions always exist in every city?

A. Yes, sir.

Q. The change of the business center or the change of the residence center or something of that kind changes the valuation of the whole region?

A. Yes, sir.

Q. Well, now, you valued, also, the railroad properties of the Rock Island system?

A. Yes, sir.

Q. At this same time?

A. We did.

Q. How long before the date of your appraisal had the Rock Island acquired its properties?

A. I couldn't tell you exactly; it was a few years, probably five, probably not so long, I don't remember.

Q. Less than three, wasn't it?

A. I have just said I do not remember, General.

Q. In appraising the value of the Rock Island properties, did you take into account what the Rock Island had paid for the property that it owned?

A. We did not have those prices before us. We had knowledge of what was paid for part of it. We took that into consideration as far as it would apply.

Q. You knew, did you not, that that property had been recently acquired and that the price paid by the company for it would probably be a fair measure of its value?

A. Well, we knew that it had been acquired, and we knew the general opinion was that it had been acquired very cheaply.

Q. Well, they had paid what the parties that owned the property asked for it, hadn't they? Most of it had been bought at private sale?

A. I presume so.

Q. Well, isn't that a pretty fair test of what property is worth, what the owner asks for it?

A. That is one of the tests, yes.

Q. But you don't think the owner always knows what the property is worth, is that the idea?

A. Well, the owner doesn't always know what the best uses are for his property.

Q. Well, would you go into court in testifying as to the value of property and testify that is was worth more than you could buy it for?

A. If I had a use to put it to that would double or treble its availability, yes, I should.

Q. You would not be governed at all by the market value, you would have a value of your own?

A. No, if the market value is one test of its value, but I say if you can buy a piece of property for one price and you know in your own mind that you can use that so as to double or treble or quadruple it for available uses, it is worth more to you than you are paying for it.

Q. When you have the purchase of land in mind for a railroad company, the question as to whether you can double or quadruple its income depends on how much in rates you are going to be able to charge for that service after you get your railroad built, doesn't it?

A. I presume it does, it depends upon the income.

Q. In valuing the Rock Island property, therefore, you valued it at a higher price than they paid for it simply because they had acquired it and then owned it and were using it for railroad purposes?

A. We didn't know what they had paid for it, sir.

Q. Why didn't you try to find out?

A. We went about the appraisement in the way we thought proper.

Q. Had there been any material change in the value of similar adjacent property between the time of the acquisition of this property by the railway company and the time when you made the appraisement?

A. You mean adjacent to the Rock Island?

Q. Yes.

A. There had been some changes.

Q. There had been no particular growth of the city or any changed condition which materially changed the price of property, had there, except the existence of the railroad?

A. No great change, no.

Q. Well, do you know of any reason why the Rock Island could not have built its road at some other place than the place where it actually located it?

A. Well, they might have come in—Do you mean on that side of the river?

Q. Well, couldn't they have shifted their road, in other words, a block to one side or a block to the other and acquire just as available property as the property they did get?

A. Not very well. They put it where they did to avoid the lake on the west side; came in between the river and the lake and through a part of the lake as it was.

Q. But, as a matter of fact, there is no substantial difference between the character or value of the land which they purchased and the character or value of the land within two

or three blocks either way from the river, is there?

A. Not much, no, sir.

Q. Now, do you want to be understood as saying that you didn't try to find out what it cost them to buy that land on the market?

A. We had a general knowledge, at least I did,—we did not ask the Rock Island to give us its prices.

Q. Well, did you go to the record to find out what they had paid from the conveyances?

A. No, sir.

Q. Well, did you consider that was immaterial?

A. It would have been some help to us, but we should not have relied on it entirely, not by any means.

Q. That is the only railroad that has built into this city and acquired its right-of-way within the city limits within the last ten years, is it not?

A. I am not sure. The Omaha bought some terminals on the West side, but I am not sure of when it was.

Q. Well, this road hadn't been in the city at all up to the time that it built in recently, had it?

A. No, sir. Not very well in yet.

Q. Do you know how your valuation compared with what the company paid for the land?

A. No, sir.

Mr. HOW: Have we started on the Rock Island case?

Attorney General YOUNG: We are starting on it now, just getting started.

Q. You said at the outset that your method of valuation of the Rock Island was just the same as the method you applied to the Northern Pacific, and the valuation you placed upon the Rock Island was just as fair and reasonable with reference to the adjacent property as was the valuation you placed upon the Northern Pacific?

Mr. HOW: He did not say so.

Attorney General YOUNG: I will ask him now if that is true.

Mr. DURMENT: Well, the record will show he did.

A. I think I said this: that we appraised each road according to the conditions surrounding it, taking into consideration all the elements involved.

Q. Well, it is a fact, is it not, Mr. Read, that your valuation of each road was just as fair as the valuation of any other?

A. We tried to be fair, yes, with all of them.

Q. Answer the question yes or no.

A. We gave it as our best judgment those prices.

Q. So that in fact, your judgment as exercised with reference to the Rock Island road, was just as unbiased and, in your mind, just as fair, as the judgment you exercised with reference to the Northern Pacific?

A. Yes, we did not attempt to favor any road.

Q. And your opinion on the one as to the real value of the land was just as sound as your opinion on the other?

A. Yes.

Q. Now, then, let me ask you whether you know at the present time how the valuation placed by you on the Rock Island right-of-way (which is the only right-of-way acquired within recent years) compared with what it cost the company to acquire it.

A. I do not.

Q. Well, if you knew that it only cost the company fifteen per cent of your valuation to acquire the land, would that change your opinion as to the correctness of your estimate?

A. No, sir.

Q. You would still adhere to the fact that the parties sold their land to the company too cheap?

A. No, I wouldn't say that; I don't know of anything that was sold too cheap, but I would say that the price they paid for it would not necessarily be the value of it to-day as acquired.

Q. You didn't take into account, in valuing the land, the improvements placed upon it by the railroad company?

A. No, sir.

Q. And I believe you said that there was nothing took place in that part of the city to change the value of adjacent land between the time of the acquisition of that right-of-way and the time when you made the valuation—

A. Well—

Q. —except the building in of this railroad?

A. The values over there—I don't think you asked me just that question, General,—

Q. I think I did.

A. There has been no substantial change, but the values over there have appreciated and are continually doing so.

Q. Well, they are appreciating moderately; how much have they appreciated during the last five years?

A. Well, if you should try to buy in there now, you would find through the better part of the West side, I should think you would have to pay several times what they bought it for.

Q. Well, that is on land similar to that acquired by this company and adjacent to their right-of-way?

A. Yes, sir.

Q. Well, what do you mean by several times? Has land doubled in there?

A. Well, in some places it has more than doubled, yes. Along near their terminals, up towards South Robert street.

Q. Well, has that increase in the value of that land arisen from the fact that this railroad has built in there?

A. That has affected it.

Q. What is that?

A. That has affected it, yes.

Q. Your testimony is not intended to apply to all of the land, is it, adjacent to the right-of-way of the Rock Island?

A. No, not all of it.

Q. Some choice pieces?

A. I mean up at this end, property that we appraised there something like at a dollar a square foot; I don't remember just exactly the appraisal, I haven't it before me.

Q. What was it you had in mind when you concluded that the ownership of that land by the Rock Island company gave it such a tremendously increased value? Was it because the Rock Island company could earn enough money to pay an income on that increased value if their rates were let alone?

A. It was the fact that they had a very available piece of property running along the river; they acquired it in—I don't know when they acquired it, but they have now a very excellent piece of railroad property there, terminal property; and it would be difficult for any other road to get between their right-of-way and the river, and we looked the whole situation over and then gave the prices on there we thought ought to apply.

Q. The prices were not controlled at all by what adjacent property could be bought for, but by the prices you thought the Rock Island ought to get for that property irrespective of what other property adjacent was worth?

A. Oh, no, we didn't do that at all, sir. We let the value of adjacent property weigh on us just as heavily as it might, but we discussed it all along the way, the whole right-of-way, and as far as the selling value would go, we would let it apply, but it is impossible to find sales or any transactions to fit every block of that property. You can't do it.

Q. Wouldn't it be a fair proposition for you and your associates to have asked yourselves "What did it cost the company to get this land?" in view of the fact that they had purchased it within two or three years?

A. Yes.

Q. But you didn't ask that?

A. We did not.

Q. Nor you didn't try to find out, either from the company or from the sellers?

A. I say we knew a good part of it. We knew what had been paid—

Q. But where you did know it you didn't apply that test at all?

A. Yes, so far as it was applicable.

Q. Well, how did you come to place a value on the land, then, seven times what the railroad company paid for it?

A. I don't know what the railroad company paid for it.

Q. Well, you have just said, a moment ago, you did.

A. No, I did not say that I knew what the railroad company paid for it. I said I knew some parts of it.

Mr. How: Are we going on with the Rock Island case this afternoon, General?

Attorney General YOUNG: We are going on with this man's fantastic judgment as to real estate until we get through with it, Mr. How.

Q. Did you ever estimate the value of a railroad right-of-way before?

A. No, sir.

Q. Or since?

A. No, sir. Well, I have estimated the property of the Minnesota Transfer since these appraisals were made.

Q. If you had charge of the affairs of the Rock Island company, then, according to your opinion, as soon as that right-of-way over here in St. Paul was acquired you would have capitalized it for seven times what you paid for it, would you, and thought it worth that?

A. I should have capitalized it at what I reasonably thought it was worth; because they bought it for one price doesn't make its value forever.

Q. Well, do you think that railroad real estate increases more rapidly than adjacent property in value?

A. Any property appreciates when you segregate a large body of it into one tract over scattered, single, isolated lots.

Q. Well, will you answer my question, please?

Question read.

A. It increases if it becomes more available, and it certainly does when it is used for railroad purposes in that way.

Q. Now, is your answer a negative or affirmative to my question?

The question was repeated.

A. Any property increases when you are able to increase its earning capacity, and if the railroad so increases its earning power it surely increases the real estate.

Q. I don't think that answers the question. Can't you answer it either yes or no?

A. It isn't a question that you can answer very well yes or no.

Q. Well, can you give any other answer than the one you have given now?

A. Well, when you improve a body of property it surely increases the value of that property more than would the value of scattered lots along the way be increased, not improved.

Q. Increase its value for what purpose?

A. For the purpose it is being being used for, as a railroad.

Q. In other words, you mean to testify that the value of this land depends upon the income the railroad company can get out of it?

A. The best use it can be put to, yes.

Q. Well, does it depend upon the income that the railroad company can get out of it?

A. It depends—that is one of the principal elements, yes.

Q. Are you of the opinion that any fictitious or any constructive or imaginery value should be attached to railroad property, as different from other real estate?

A. No, I don't think that at all, but I think that a value

that anybody would have to pay in gathering up a large number of lots should be attached.

Q. Well, I can't follow you. You say that these people gathered up these lots, acquired them in a bulk tract?

A. Yes.

Q. And that what it cost them to do that was not the controlling feature in your mind?

A. No, sir.

Q. That you thought that the land was worth many times more than they paid for it?

A. I do.

Q. Without a railroad on it?

A. I don't know what they paid. We appraised it as we found it, and we gave our best judgment as to its value.

Q. And why did you refrain from finding out what they had paid for it? Were you afraid that it would interfere with the valuation that you wanted to put on it?

A. No, sir; I don't think it was suggested to the minds of any of us to ask.

Q. It wasn't suggested?

A. No, I don't think any of us thought of it.

Q. In other words, you cared nothing about that element at all?

Q. Well, we didn't care very much about it, to be frank with you.

Q. I should judge by the limit you reached that you didn't but why didn't you? That is what I want to get at.

A. I told you as frankly as I could I don't think we thought of it.

Q. If you were sent out to appraise a tract of land that I own, would you go onto that land and give your speculative notion as to what it was worth, or would you come and ask me what I would sell it for?

A. Well, it would depend very much. We are not sup-

posed to go and ask the owners what they will take for land when we are sent to appraise it.

Q. Well, if you were testifying in court as to the value of a tract of land or the value of its use, don't you think you would be obliged to know what it could be bought for?

A. Not if you are capable of putting a value on it.

Q. Well, what do you mean by capable of putting a value on it?—Can you—

A. Suppose we thought the land was worth ten thousand dollars and had reasons to believe that that was a fair value on it, if we should come to you and you should say "$15,000 is my price," that wouldn't affect our valuation.

Q. But suppose I told you you could have it for $1,500, would that change your opinion?

Mr. HOW: As to the market value—as to the value of the property or the price which you could get? What is the question?

A. I don't know myself.

Attorney General YOUNG: Counsel undertook to state a specific case where his opinion as to the value of a tract of land would not be changed by the fact that the owner asked more than he thought it was worth. Now, I ask him if it would be changed if the owner asked less.

WITNESS: No, I don't think it would affect any fair appraiser at all.

Q. In other words, you have your own notions about the value of the land without regard to market value?

Mr. HOW: I object to the question, and I submit that the witness, who is not a lawyer, ought not to be confused between the market value and the price that you can happen to get property for, whether it is above or below the market value. The counsel is confusing him, very manifestly. The witness, who is not a lawyer, ought to have the questions framed so that he can understand, and I don't believe he can.

Attorney General YOUNG: Well, let me ask him a question. I withdraw the last one.

Mr. How: If he can get a lot for nothing, that is no test of its market value.

Q. Have you in mind any market value of real estate different from what it can be bought for or sold for under ordinary circumstances?

A. Market value, the ordinary market value, we consider what a lot can be sold for by one willing to sell to a purchaser, but there are elements that enter into it; if there is competition, it changes the market value very rapidly, very quickly.

Q. Well, where an owner of land voluntarily sells it to a voluntary buyer, not at a forced sale but under ordinary circumstances, doesn't the price acquired under those circumstances determine for the time being the market value of that land?

A. No, sir.

Q. If a large number of persons in the vicinity voluntarily sell different tracts to a single purchaser so that from the various sellers he acquires a large gross tract, under ordinary circumstances and without compulsion on the part of the sellers, doesn't the price that he paid for that land in that way determine its market value in your mind?

A. That is only one of the factors in getting at the value.

Recess until 2 P. M.

AFTERNOON SESSION.

RE-DIRECT-EXAMINATION.

By Mr. How:

Q. Mr. Read, I wanted to ask you one question with regard to your views of market values. You appear to have been examined upon the theory that the price for which property has sold, has determined, for at least the time being, absolutely,

its market value. Now, I ask you if you have an off-hand opinion as to the value of the property at the corner of Seventh and Robert streets, occupied by a drug-store, for instance.

A. About $3,000 a front foot.

Q. That property is most available for just such purposes as it is occupied for?

A. Yes.

Q. Supposing that property should be sold by the owner today for $1,000 a front foot, what effect would that transaction have upon your opinion as to the market value of that property as you understand the meaning of "market value"?

A. None whatever.

Q. Supposing in West St. Paul—where I take it all the property of the Rock Island road is situated—Am I right about that?

A. Yes, sir.

Q. Supposing in West St. Paul land in the low portions of the flat, which perhaps has not been considered available for any purpose, was sold by the owner to some individual without knowledge that the land was available for railway purposes, and for a nominal sum, what effect would that transaction have upon your judgment as to the actual market value of that property?

A. Very little.

Q. It is generally said that market value is determined by the price which property will bring as between an owner desiring to sell and a purchaser desiring to buy. I take it that that means by an owner who knows what his property is worth or good for and who is desirous of getting all he can out of it and a purchaser who is desirous of buying for the best purpose for which the property is put; is that your understanding?

Mr. DURMENT: We object to that as wholly immaterial.

A. Yes; I thought we were entitled to take that into con-

sideration.

Q. Have you known of any cases in your real estate business in St. Paul in which owners have sold property for less than what you considered the market value of the property?

A. Yes, sir, it very often happens.

Q. Have you ever known any such cases in which early subsequent events demonstrated that such owners might have obtained a higher price if they had known of facts with regard to the property?

A. Yes.

Q. Such cases perhaps have been common in your experience?

A. Yes.

RE-CROSS EXAMINATION.

By Mr. DURMENT:

Q. Mr. Read, have you known men to buy property and pay more than what you considered the market value for it?

A. Not often.

Q. Well, have you known it?

A. No, I can't recall any case.

Q. Can't recall any cases?

A. No.

Q. Never knew of a man buying property in St. Paul who paid more for it than it was worth in the market?

A. No, sir, I can't recall any of them.

Q. Suppose that in this same block on Robert street, that Mr. How has referred to, where you say that the corner is worth $3,000 a front foot, property was sold for $1,000 a front foot and that the three other corners at those cross-streets had been on the market and efforts had been made to dispose of them at $3,000 a foot and that the highest offer any one had had or been able to get on any of those corners was $1,000 a front foot, would that have any influence on your mind as to

the market value of the property?

A. It might have some bearing, but I can hardly imagine such a case.

Q. Well, I have imagined it; now, what would be the effect upon your opinion as to the market value of that property under such circumstances?

A. Well, if I considered it worth $3,000 a front foot and knew that it was paying a handsome income on that price, I should not consider the fact that it was being sold for a thousand dollars a front foot as a proper valuation for it.

Q. Then the price which persons who desire to sell can obtain for their property does not have much to do in fixing your opinion as to the market value of the property?

A. It has something to do with it but not—

Q. I said does it have much to do with it?

A. It is not conclusive.

Q. Has it any considerable weight?

A. Yes, it has.

Q. Can you tell me how the market value of any commodity—potatoes or pumpkins or butter or real estate—is ordinarily fixed or determined?

A. The ordinary meaning of "value" I think is what the commodity will sell for in the open market.

Q. But you think that does not apply to real property?

A. It does not apply to those imaginary sales you have been speaking about.

Q. Well, will it apply ordinarily to real property?

A. It will apply in a certain way, but not in the cases that have been put to me.

Q. Is it not, in your opinion, true that if, in a certain section or territory, there had been, through the course of years, a large number of transfers of real property, the prices at which those transfers had been made would be the best criterion by which to judge of the market value?

A. No, it would one of the tests only.

Q. It would not be one of the best tests?

A. No, sir, I don't think so.

Q. And if, as you instanced this morning, there was a section in the city here where the property was improved and was rented and bringing in a good rental and yet it was impossible to get an offer, say within six months or a year period, upon that property of a price equal, or anywhere near equal, a sum upon which that rental would be a fair return, but you could sell it for half such value and no more in the market, the price at which you could sell it would not fix the market value?

A. It might fix the value at which you could sell that particular piece, it would not fix the value for the neighborhood or the surrounding property.

Q. It would not fix the value for the surrounding property? Well, it would be as good a test as you could have as to the market value or the selling value of the adjacent property or the surrounding property, would it not?

A. Well, it would depend entirely upon the financial condition of the owners as to whether they were willing to accept such a price or not. Sometimes it happens that a piece of property will stay on the market for weeks and months without finding a buyer, but at the same time it would be absolutely impossible to buy the property on either side of it at the same price. Now, the value for which that property would sell would have some bearing on the value of the others, but it would not follow that we could expect a buyer at that price.

Q. Then as I take it, what property changes hands for, what it sells for in the neighborhood of the property you are valuing, has but little weight in determining what the market value is?

A. No, I didn't say that; it has considerable weight, not little weight; but a few random sales would have very little

weight.

By Mr. HOW:

Q. Mr. Read, there is no constant real estate market as there is a constant market for wheat, for instance?

A. No, sir.

Q. If you have 50,000 bushels of wheat, you can sell them at a market price any time by telegraph; if you have real estate you can't sell that at its fair market value at any time, because you have no exchange, you have to hunt for a purchaser willing to buy?

A. That is very true.

Q. And sometimes it takes weeks and months, as you say, to find him?

A. It does.

Q. You cannot at any time dispose of real estate at even a decided discount upon what you consider its fair market value?

A. Not quickly if you have to.

Q. And any sale of real estate, I take it, that must be made within a shortly limited time, is considered a forced sale?

A. Yes, in a measure it is forced.

By Mr. O'BRIEN:

Q. Mr. Read, have you ever examined an abstract of title to property in St. Paul?

A. No, sir.

Q. You have seen a great many?

A. A great many, yes, sir.

Q. You know that every piece of property within the limits of the city of St. Paul has been sold over and over again, do you not?

A. I presume all of it has, yes.

Q. Every piece of property that has ever been brought to your attention?

A. Yes.

Q. Now, if you would take the record of the sales of a sufficient amount of property in St. Paul, covering a sufficient period of time, would you not by that means absolutely ascertain the ordinary and usual and fair market value of that property during various periods of time fixed and included within the limits of your examination?

A. Not absolutely.

Q. You don't think, then, a sufficiently large number of sales covering a sufficiently large period of time would fix what has been the market value of the property?

A. No, sir, it would not.

Q. And yet the market value of any commodity necessarily means what it will bring under particular circumstances and conditions upon the market, does it not?

A. Ordinarily.

H. A. GRAY,

recalled for further cross-examination, testified:

By Mr. O'BRIEN:

Q. Mr. Gray, we have attempted to make an extract from your testimony as given when you were last upon the stand, to show the amount of actual cash invested from private purses in the Northern Pacific Railway Company from its organization to the 30th of April, 1908, and the amount of that investment which still remains invested in the Northern Pacific Railway Company; that is, where bonds or stocks have been redeemed without regard to where the funds for such redemption came from, the amounts so redeemed have been deducted from the investment, leaving a statement of the amount of cash received from private purses (if I may use that term) still remaining invested in the Northern Pacific Railway Company; and this statement is further exclusive of all sums received by the Northern Pacific Railway Company from land-

grants and bonuses, and also excludes any portion of the earnings which may have been invested for permanent improvements or for equipment; so that it is a mere statement of the amounts still remaining invested which have been received, as I have said, from private purses or private individuals. I now hand you Ex. MM—Gray, which is the statement prepared upon the theory which I have explained and which, as I say, purports to be a statement of your claims as to that net investment. I ask you, in the first place, to notice that there are certain ink corrections in this statement.

A. Yes.

Q. Will you please examine that statement and say when you have sufficiently examined it?

A. Well, I have already examined a copy of this statement this morning in connection with Mr. C. W. Hillman, and the statement is approximately correct as showing what you claim it does show. I am not able to say exactly as to that; it is what might be called an "E. & O. E." statement; that is, there may be small differences, but I believe it is substantially correct.

Mr. O'BRIEN: We offer Defts.' Ex. MM—Gray in evidence. I understand this to be the statement which the Master requested to have made.

The MASTER: I assume that it is, from your question, what I desired to have worked out from Mr. Gray's statement.

Q. Mr. Gray, in your testimony when you were last upon the stand you gave a statement of the syndicate account at the time of the re-organization in 1896, the last statement of which was "Leaving a net profit to the syndicate, based upon the opening price of the securities in the market, of $2,748,683.50, including the three million dollars agreed upon cash commission; or, disregarding that, a loss of $251,336.50." Is that correct?

A. That is what the statement shows.

Q. Do you know, of your own knowledge, whether or not the syndicate disposed of those securities at the prices given in your statement?

A. I do not.

Q. Do you know, of your own knowledge, when those securities were sold?

A. I do not.

Q. Do you know, of your own knowledge, to whom they were sold?

A. I do not.

Q. Do you know, of your own knowledge, the actual profit that the syndicate made?

A. I do not.

Q. Or do you know, of your own knowledge, the actual profit which any purchaser of those securities made?

A. I do not.

Q. In that statement as to the syndicate profits you have not included any profit which was made upon stock of the Northern Pacific Railroad Company the holders of which refused to pay the assessment resulting in the stock being taken by the syndicate?

A. I don't know of any such case.

Q. You don't know, of your own knowledge, whether there was any such case or not?

A. I do not.

Q. You remember when you were cross-examined with regard to this matter before, it appeared from the report of the re-organization committee that there was stock apparently so disposed of, do you not?

A. Do you refer to the fact that the amount reported as deposited by the public was less?

Q. Yes.

A. Yes, but in making up this statement the syndicate were treated as if the whole matter had been settled, had been

vided for in accordance with the contract with them.

Q. I understand that, Mr. Gray, and that is what I wanted make clear. The statement is perfectly fair in that respect, d I am not criticising it, but what I am desiring to show is t that is the way you treated it.

A. Yes.

Q. You treated the whole matter in bulk. Now, if, as a tter of fact, the public only deposited $33,713,130.82 of the preferred stock and $42,114,900 of the old common stock, difference between that and the stock which was in exist-e at that time must have been disposed of by the syndicate ying the assessments and taking the stock?

A. As a matter of fact, I don't believe anything of the kind, ause I know that we have had small amounts of stock drib-ng in from year to year to us that have been purchased in a y small amount, just to get it out of the way. I don't think t those differences accrued to the syndicate at all; but in s statement it was only fair to give the syndicate the full efit of all the stock that they were entitled to get under ir contract as if all the outstanding old stock had been verted.

Q. But, as a matter of fact, at the time the re-organiza-n managers made their report, it did appear from their re-t that the difference between the full issue of preferred ck and $33,713,130.82 had been absorbed by the syndicate?

A. I don't see how it appears that it had been absorbed the syndicate. The syndicate, as a syndicate, handled y little of the stock. The re-organization managers dealt ectly with the holders of the old stock, and section 7, I think s, of the contract shows that it was left with them to deal h the holders of the old stock and to make the exchanges l to account to the syndicate.

Q. The syndicate accounted for assessments upon the old ck (old preferred stock) at $10 per share, to what amount?

A. I never saw any account made by the syndicate or any report made by the syndicate.

Q. Well, in this statement that you file here, you either take or give credit for how much preferred stock at $10 per share?

A. In this statement the syndicate is treated as if it had received all the stock that would have been necessary to provide for to retire all the stock that was outstanding, both common and preferred of the old Company.

Q. Well, now, how much was that, that preferred stock?

A. $33,238,300; and of common stock, $49,000,000.

Q. Now, the report of the re-organization managers shows that there was actually deposited by the public how much of the preferred stock?

A. $33,713,130.82.

Q. And of the common stock how much?

A. $42,114,900.

Q. Now, if, as a matter of fact, the holders of that seven millions of the common stock did not deposit their stock or pay the assessment of $15 per share, the syndicate was priviledged, upon the making of these payments, to receive new stock of that amount, was it not?

A. I don't think so.

Q. Well, you actually gave that stock to the syndicate, did you not?

A. The report shows just what stock was given to the syndicate.

Q. Well, did you not give the syndicate forty-nine million dollars of common stock in addition to the amount of common stock required to retire the preferred stock?

A. As I say, I don't think that any of the stock was given to the syndicate, except what is shown in the report.

Q. Neither do I, Mr. Gray; but what was the total amount of common stock given to the syndicate?

A. Well, it is what is shown in the report.

Q. Well, what is that?

Mr. HOW: Let me direct your attention to Table No. 4.

A. The amount of common stock given to the syndicate was $10,880,900.

Q. I know, but the amount given all together for the re-organization?

A. But it wasn't given. Under the syndicate agreement it was not necessary that the stock should be given to the syndicate. The re-organization managers were to treat with the holders. It seems to me this is largely a question for lawyers, but if I might I would like to read what section 7 says. "The syndicate hereby authorizes the re-organization managers in and by the proposed plan to offer for account of the syndicate to depositing holders of the preferred stock of the Northern Pacific Company at $10 per share preferred stock of the new company to the amount of 176,192 shares, and common stock of the new company to the amount of 176,192 shares, and to offer to depositng holders of the common stock of the Northern Pacific Company at $15 per share common stock of the new company to the amount of 490,000 shares, upon the terms and in the manner provided in said plan and agreement; and the re-organizaton managers hereby agree to make such offer. All moneys paid by the depositing holders of preferred or common stock of the Northern Pacific Railroad Company under said plan and agreement shall be credited on account of the amount payable by the syndicate under Article 1 hereof, and may be used by the re-organization managers for any purpose of the re-organization." Now, I don't understand that that provides that they were to receive anything in excess of the money that was actually turned in by the public.

Q. Now, we will try to get this in another way, because I am sure you and I agree upon it, if we can only get at it. At

the time of the re-organization, there was appropriated of the stock of the Northern Pacific Railway Company for the purpose of retiring the stock of the Northern Pacific Railroad Company how much common stock?

A. Eighty millions.

Q. And who took charge of that eighty millions?

A. The re-organization managers.

Q. They returned to the Company how much of that?

A. Two and a half millions.

Q. There was then absorbed in the retiring of the old stock how much?

A. There was used for conversions and assessments $66,619,100, and sold to the syndicate $10,880,900, which together make $77,500,000.

Q. There was, then, absorbed in the re-organization, $66,619,100?

A. Yes, sir.

Q. Now, of that how much was used for the purpose of retiring the preferred stock?

A. $16,856,565.

Q. That was done by giving to each share of old preferred stock deposited one-half share of new preferred stock and one-half share of new common stock?

A. Yes.

Q. And in that way, of this $66,619,100 of new common stock, there was absorbed the amount you have mentioned, $16,856,565?

A. Yes.

Q. That left of the new common stock absorbed by exchanging it, share for share, of the old common stock, how much?

A. $42,114,900.

Q. Mr. Gray, if you will deduct $16,000,000 from $66,000,000 you will get more than $42,000,000.

A. Adding this $42,114,900 to the $16,856,565, given to the holders of old preferred stock, makes $58,971,465 of common stock so used which deducted from the $66,619,100, reported by the re-organization managers as used for conversions and assessments, leaves $7,647,635 unaccounted for.

Q. Are you able to account for that?

A. Only in this way; that I know that some of this stock remained in the hands of the original holders or the holders at the time of the re-organization. I think small amounts have dribbled in from time to time since, and there probably is considerable of it still outstanding.

Q. But at the time of the re-organization, the full amount of the common stock was issued?

A. Of the new common stock?

Q. Of the new common stock.

A. Yes.

Q. There was issued, in the course of the re-organization, $77,500,000 of the new common stock?

A. Yes.

Q. And since that time the Northern Pacific Company has sold the remainder of the common stock $2,500,000?

A. Yes.

Q. And you get credit for it in this statement which you have just verified, Ex. MM—Gray?

A. Yes.

Q. And in addition to that, the re-organization managers acknowledged the receipt of the assessments upon all of the old common stock?

A. Oh, there was considerable preferred stock used in the retirement of bonds.

Q. I am not talking of the preferred stock at all. The re-organization report acknowledges the receipt of the full assessments?

A. Yes.

Q. And you have credited the syndicate in your account with the full assessments upon all of the old common stock, have you not?

A. I don't quite understand what you mean by "in your account."

Q. In your statement as to the syndicate profits you have charged them with the receipt of $15 per share upon all of the old common stock?

A. Yes.

Q. That is, the item appears at $15 per share on $49,000,000 old common stock. as above, $7.350,000?

A. Yes.

Q. So that the entire report of the re-organization managers, the entire statement which you have made as to the syndicate account, is upon the theory and assumption that all of the old common stock was surrendered, $15 per share paid upon it, and a like amount of common stock in the new Company issued in place of it?

A. Yes, I had another statement made before that, which showed a profit of only $1,500,000 which was based upon the assumption that the syndicate got only the actual amount deposited by the public, but on talking it over we thought that it was only right to charge them as if they had received what I don't believe, for one moment, they did receive.

Q. Now, it appears from the report of the re-organization committee that the public only deposited of the $49,000,000 of the old common stock $42,114,900?

A. Yes.

Q. Leaving, as you have said, $7,647,635 of the old common stock unaccounted for?

A. Yes.

Q. But the assessments have been paid upon it and the new stock has been issued in the place of it?

A. I don't believe the assessments have been paid upon it.

Q. Then if the assessments have not been paid upon it, the new stock was issued without any consideration?

A. I don't know.

Q. I don't claim, Mr. Gray, that it is a matter of criticism that where any of the old stockholders failed to pay their assessment their stock was extinguished and the stock given to somebody else who would pay the assessment, I am trying to find out the fact as to what was done.

A. I don't know what was done.

Q. But you do know that the stock was issued for it?

A. I don't believe, myself, that anybody's stock was ever extinguished and stock issued to somebody else in place of it—

Q. But you do know that the stock was issued?

A. —because my belief is (I haven't the slightest doubt of it) that there is a very considerable quantity of that stock still outstanding.

The MASTER: Do you mean the old stock?

WITNESS: The old stock, yes, sir.

Q. It must be outstanding if it has not been surrendered, and you don't show that it is surrendered. The paper certificates are still outstanding, there is no question about that?

A. Yes.

Q. And if you will take it up I think I could find some of it for you.

A. You have sources of information that I haven't.

Q. Well, I feel quite confident that if you think it is of any value we can get it.

A. Oh, I am not worrying about it.

The MASTER: You are trying to find out what has become of the new stock that was given to take it up?

Mr. O'BRIEN: Yes.

Q. Now, that new stock that was issued as a part of this re-organization to take up this seven millions of the old stock was either issued without any consideration at all, or it was

issued in consideration of the payment of the assessment of $15 per share by somebody, wasn't it?

A. I don't know anything about it.

Q. But you do know that there is that amount unaccounted for?

A. I know that there is that discrepancy between these tables in this report.

Q. And that discrepancy has not been taken into account in ascertaining the syndicate's profits or accounts?

A. No, and I don't think it should be.

Q. In Defts.' Ex. Y, Mr. Gray, this additional amount of stock which you say now is unaccounted for is considered to have been taken by the syndicate for $15 per share?

A. This statement is not made up in such a way that I could answer that with a yes.

Q. Well, in Ex. Y the syndicate is charged with the full amount of the stock which was absorbed by the retirement of the old stock both common and preferred?

A. The way it actually stands is that the syndicate is charged with having received $10 per share on all old preferred stock deposited by the public and $15 per share on all old common stock deposited by the public.

Q. In Ex. Y the syndicate is charged with having received all of the new common and preferred stock, which, according to your testimony, was absorbed in the retirement of the old common and preferred stock?

A. The syndicate is only charged with having received the preferred stock which it was agreed to give them, which was only about one-quarter of the preferred stock issued.

Q. Ex. Y—Gray, the statement prepared by the State and verified by you, is based upon the assumption that the syndicate retained all of the stock which the plan of re-organization contemplated would be required to retire all of the old common and preferred stock, and that stock and that account is

further made upon the basis of considering the stock at its par value?

A. Yes.

Q. In your statement given in your testimony the other day you omit any reference to the $7,647,635 of stock which you say you are not able to account for; is that correct?

A. Except that it is provided for in charging the syndicate with $15 a share on the total issue of $49,000,000 of stock.

Q. You do not charge the syndicate with the receipt of that amount of stock?

A. No.

Q. And you have made up the syndicate account wth reference to the market value of the securities at the time of the re-organization?

A. Yes.

Q. So that with that difference, your statement in your testimony when you were last upon the stand and Ex. Y are identical?

Mr. HOW: So that there may not be any misunderstanding, you have overlooked something and so will he. Your statement Ex. Y, as originally prepared, had the purchase of bonds under Section 2 of the syndicate contract, and Mr. Gray struck it out. His last statement includes that in the shape of a financial history; so don't let him overlook that.

Mr. O'BRIEN: Well, if there is any other change, say that too.

Mr. HOW: I think that is all.

A. There is no close relation between the two statements. Both are hypothetical, and, in my opinion, of no real value.

Q. Neither your own nor the one on behalf of the State?

A. Neither my own nor the one on behalf of the State. Now, you can strike that out if you want to.

Q. We wouldn't put that touch of nature out for anything. I call your attention to Ex. 28—Gray. Will you please ex-

plain that exhibit?

A. This exhibit is made to show the differences between the State's Ex. V of cash cost and my exhibit No. 15, and it goes through various items and shows items that are included in my exhibit that are not included in the State exhibit, and vice versa.

Q. When you speak of the State exhibit, will you give the name of it?

A. It is Ex. V.

Q. When you refer to "State's exhibit" you refer to Ex. V—Gray?

A. Yes.

Q. In Ex. 28 you first show the difference for the period from the re-organization of the road to the failure of 1875?

A. Yes.

Q. Do I understand that you now concede the item of $65,610,825.92 is incorrect?

A. No.

Q. You simply show that that is the difference between the two statements?

A. Yes.

Q. But you have no record, except the ledger entry that you speak of, to justify this item of $65,000,000?

A. That is the best kind of evidence in accounts—is the ledger. My Ex. No. 15 shows the cost or book value of the property acquired under foreclosure in 1875, at August 31, 1896, to be $65,610,825.92. In Ex. V the State allowed as cost of construction during that period $18,923,119.50, leaving a balance of $46,687,706.42 to be accounted for. This is accounted for, in the first place, by the construction, as shown by the Company's ledger of April 30, 1875, to be $2,453,989.38 in excess of the amount allowed by the State. In addition to this, there were discount, commissions, expenses and interest on the 7.3 bonds, and interest on notes, amounting to $6,199,-

563.28. There was a loss in operating, during the first period prior to the 1875 re-organization, and in value of material and other assets on hand, amounting to $5,461,117.61, leaving $32,573,036.15 as representing the claims of the old stockholders, which were recognized in the re-organization in the issue of new stock, and represented the net cost in the issue of the new stocks less the proceeds of lands sold during the period covered. That accounts for the $46,687,706.42.

Q. This statement of the "claims of old stockholders" is a matter that you have absolutely no knowledge of, isn't it?

A. Only in this way, that the new Company by issuing to them stock in certain proportions recognized their claims to the extent of the par value of the stock.

Q. That is to say, prior to the re-organization, there had been a contract entered into between the original promoters of the road by which they agreed to divide the stock of the road in certain proportions—

A. Yes.

Q. —and after the re-organization that was done, and the entire forty-nine millions of stock was issued?

A. Yes.

Q. But there is no evidence of their having paid a dollar for that?

The MASTER: Of the old stock?

Mr. O'BRIEN: Of the old stock?

Q. There is no evidence of a dollar having been paid for that old common stock?

The MASTER: The thiry-two millions or whatever it may be?

Mr. O'BRIEN: Yes.

A. That goes back into the old history again. Of course, a great portion of that stock, as shown by the history which is already in the record, was paid out in bonuses in connection with the sale of the 7.3 per cent bonds.

Q. But you don't claim that this item represents any new

cost or any new receipt different from your general financial statement that you made here the other day, do you?

A. No.

Q. So that after taking credit for all of the discounts and for all the additional construction and for the loss in operating, having finally found a discrepancy still existing of $32,573,036.15, you have assigned that to the claims of the old stockholders?

A. Well, it is not simply that that is done in a chance way, but it does definitely represent the fact that securities were issued to certain people and that that security created a liability upon the books of the Company which must necessarily create a corresponding asset.

Q. Well, where is the corresponding asset, what did they get for that thirty-two millions,—the cancellation of the old agreement?

A. They got the carrying out in good faith of what had been agreed upon.

Q. But it is a mere bookkeeping entry, is it not, Mr. Gray? You might as well have called it balance, or deficiency, or—

A. Not at all.

Q. —anything else?

A. Not at all. These people had to be credited up with the stock that was issued to them, whether that stock was issued to them rightly or wrongly; and having created a liability in that way upon the books of the Company, that necessarily created an asset on the other side of the books.

Q. That is, necessarily created a book-keeping asset?

A. Call it what you please, but—

Q. It didn't create a live asset?

A. Well, you and I may have different ideas of what is meant by the term live asset.

Q. Well, what did they get for it,—cancellation of the contract—carrying out of the agreement?

A. That is already in the record in the "history" that has been presented.

Q. Well, I think we understand what that is. Now, go on.

A. The next item that is shown is a credit on account of improvements and betterments to June 30, 1882, not shown in the annual reports. In State's Ex. V, for the year 1887 there was an item omitted or an error made, on account of premium on first mortgage bonds, of $415,659.76. There were a number of other permanent investments arbitrarily added to the 1890 report to the Commission, amounting to $1,351,633.64. This amount represented items of real estate, dock property at Duluth, Minnesota Transfer property, property at Spokane, explorations of coal lands, collieries at Tacoma and lime quarry, various branch lines, and a half interest in 23½ miles of the St. Paul & Duluth railroad. There was a credit for property sold in July and August, 1896, of $1,908.15; there was an item of interest on constructon of $4,534,882.15, against which the State allowed $544,381.47, leaving a balance of $3,990,500.68; there was an item of discount on bonds of $17,569,743.26, of which the State allowed $25,688; and there was included in specific construction prior to 1888, $12,118,219.75; leaving a balance of $5,425,833.51. There were bonds and stocks of companies forming part of the System included in construction and equipment as see pages 25, 37, 39 and 49 of 1896 report to Commission, and cash expenditures made by the Northern Pacific Railroad Company, amounting in the aggregate to $28,765,996.36. The foregoing accounts for a discrepancy in construction account, up to August 31, 1896, of $86,324,260.45. The value of equipment turned over to the Northern Pacific Railroad in 1875 as shown by the State, was in excess of that claimed by the company $97,997.73, and the equipment included in State's Ex. V as purchased from 1875 to June 30, 1880, was $7,511.74 in excess of that claimed by the Company. The equipment on the Pend d'Oreille division

was, in credit, $8,404.99 for the year ending June 30, 1883; for the year ending June 30, 1884, there was a debit of $1,960; for the year ending June 30, 1885, there was a debit on account of Pullman, Northern Pacific Association, of $37,505.50; there was trust equipment, omitted in 1890 report to the Commission and corrected the following year, amounting to $2,666,000; there was equipment charged to operating expenses in 1891 report to the Commission of $26,400; there was equipment sold in July and August, 1896 making a credit of $5,822.84; there was discount and expenses on securities sold in the purchase of equipment of $939,858.42; making a total to be added to State's Ex. V of $3,551,986.62. During the period of the present Company from September 1, 1896, to April 30, 1908, there was an appropriation for equipment in 1898 not used, making a credit of $296,000; there was a credit on account of the value of the Seattle & International equipment (a credit to construction account) in 1901, of $154,490; there were equipment expenditures included in appropriations from income shown in reports to the Commission under the head of Construction, on page 27 of the printed annual report of the Railway Company for the year ending June 30, 1900, $641,581.81; 1901, $492,249.43; 1902, $201,064.44; 1904, $338,604.65; 1905, $4,169.14; there was the value of the Washington & Columbia River Railway equipment taken up, $91,125; there were securities of other companies now forming part of the Northern Pacific Railway System, acquired as follows: Washington Central Railway Company bonds, $1,853,000; Washington Central Railway Company stock, $221,279.94; Clearwater Short Line Railway Company stock, $2,127,200; Lake Superior Terminal & Transfer Railway Company additional stock, $56,100; St. Paul Union Depot Company additional stock, $53,600; making a total addition, from September 1, 1896, to April 30, 1908, for construction of $4,156,689.94, and for equipment of $1,472,794.47. Adding these amounts shown for the period

ending August 31, 1896, makes an addition for construction of $90,480,950.39, and for equipment of $5,024,781.09; or a total of $95,505,731.48, being the difference between State's Ex. V and my exhibit No. 15.

Q. The total difference between Ex. V—Gray and Ex. 15—Gray is $95,505,731.48?

A. Yes.

Q. And the total difference for construction in that account is $90,480,950.39?

A. Yes.

Q. In your Ex. 28 you have shown where these differences arise?

A. Yes.

Q. There is, first, the item of $32,573,036.15, which you have included under "claims of old stockholders"?

A. Yes.

Q. Now, what is the total amount of discount on securities and interest during construction included in your Ex. 28?

A. The total amount of discount, commissions and interest on securities during construction, including some expenses which I am not able to segregate now, is $29,244,047.11.

Q. That accounts for $61,817,083.26 of the difference, does it not—those two items?

A. Yes.

Q. Now, will you please state the amount given by you as expended for the purchase of the bonds and stocks of other companies in your Ex. 28?

A. Prior to August 31, 1896, $28,765,996.36; since September 1, 1896, $4,311,179.94.

Q. Those three items (showing witness memorandum) the amounts allowed for the claims of old stockholders of 1876, discount, interest and commissions on securities, and amounts paid for securing the bonds and stocks of other roads, make up $94,894,259.56 of the total discrepancy?

A. Yes.

Q. Now, do you claim that the Northern Pacific Railroad Company expended thirty-two millions and some dollars for securing the bonds and stocks of various branch railroads, over and above the amount shown in the reports to the State spent for acquiring other lines and which are included in Ex. V?

A. I have furnished Mr. Durment with a complete statement, I don't know whether it has been used as an exhibit or not, but I think that that would answer your question.

Q. You remember, however, that in Ex. V is included the amount reported to the State as having been expended for acquiring constructed lines?

A. Some.

Q. Now, do I understand that your researches have convinced you that thirty-two million dollars additional has been spent for that purpose?

A. Yes.

Q. You are satisfied that that is the case?

A. Yes.

Q. I show you Defts.' Ex. AA—Gray, Supplement. Is that a complete history of the branch roads acquired by the Northern Pacific Railroad Company, or must it be read in connection with Defts'. Ex. AA?

A. It is not a complete history; for instance, it does not pretend to give the mileage or the location of them.

Q. Does it include them all?

A. It covers all the roads.

Q. And covers all of the amounts as reported to the State in the reports expended for acquiring roads, together with this additional amount appearing in your Ex. 28?

A. It was made not with reference to the State reports but with reference to the Company's books.

Q. But does it cover the entire matter?

A. Of acquired roads?

Q. Of acquired roads, yes.

A. Yes.

Q. Now, what was the total amount, as shown by that report, expended for the acquisition of such roads by the Northern Pacific? What is the total amount in cash?

A. $29,908,102.60.

Q. And how much in bonds?

A. $39,956,650; some payment was made in stock.

Q. How much in stock?

A. $6,266,500. Making an aggregate of $76,131,252.60. My Ex. AA shows a total of $91,150,127.54, or a difference of $15,018,874.94; accounted for by bonds of the St. Paul & Duluth Railroad Company assumed by the Northern Pacific, $4,906,500; car trust notes of the St. Paul & Duluth Railroad Company assumed, $358,929.73; bonds of the St. Paul & Northern Pacific Railway Company assumed, $8,003,000; bonds of the Washington & Columbia River Railway Company assumed, $2,620,000; making a total of $15,888,429.73. Against which there is premium and discount on securities of the Spokane & Palouse Railway Company and the Coeur d'Alene Railway and Navigation Company's bonds, acquired after the organization of 1896, $1,169,800, less a saving in purchase of $3,101,000; of Duluth & Manitoba Railway Company's bonds of $300,245.21; leaving a net amount of $869,554.79; which, deducted from the $15,888,429.73 given above, leaves the difference between Ex. AA and this statement of $15,018,874.94.

Q. In Ex. MM—Gray, the investment account introduced to-day, the road is given credit for the assumption of the bonds of branch lines, is it not?

A. Yes.

Q. That is considered an investment?

A. Yes.

Q. Is that amount an additional cost of acquiring the

branch lines, or is it included in the total cost which you have given of $76,000,000?

A. No, it is not an addition.

Adjourned until the morning of Friday, October 2, 1908.

FEDERAL BUILDING, St. Paul, Minnesota, October 2, 1908.

The hearing was resumed at 10 o'clock, a. m.

H. A. GRAY,
recalled for further cross-examination, testified:

By Mr. DURMENT:

Q. Mr. Gray, you were asked to give us a statement from the books of the Northern Pacific showing the items for expenditures at Tacoma and Seattle from September 1, 1896, to September 1, 1908, including amounts paid the Great Northern Railway for property at Seattle as they appear upon the books of the Northern Pacific Company and not reported under right-of-way and station grounds or real estate in the exhibits heretofore in; have you that?

A. I have made such a statement. I didn't suppose it was to be used as an exhibit.

Q. Will you give us those figures, or state them, so that they may appear in the record?

A. There was an amount charged to grading or expenditures at Tacoma, of $138,796.57, and at Seattle, $41,716.31, making a total of $180,512.88. There was an amount charged to sidings, yards and terminals at Tacoma, $321,449.16, at Seattle, of $1,769,068.43, a total of $2,090,517.59. There was an amount charged to bridges, trestles and culverts at Seattle, of $4,955.71; there was an item charged to station buildings and fixtures at Seattle, of $14,975.06; there was an amount

charged to docks and wharves at Tacoma, of $25,778.58, and at Seattle, of $12,623.60, or a total of $38,402.18, making aggregate charges at Tacoma, $486,024.31, at Seattle, $1,843,339.11, a total of $2,329,363.42.

Mr. HOW: What was this asked for in connection with?

Mr. DURMENT: There is one of the exhibits, as I recall it, (if not in some of the reports) a lump item for grading and the like which is not included in the reports under the head of Right-of-way and Station Grounds or Real Estate, and it was to show just what that was and where it was spent. I don't recall just now where that appears. Perhaps Mr. Gray remembers.

WITNESS: It was in Ex. No. 15.

Mr. HOW: This just gives the details of that item?

WITNESS: No, the idea was that that item does not include all the expenditures of that character, that there were other expenditures that were included in other accounts not shown up in the exhibit, and we went through and made an analysis of the accounts to determine what items had been so included.

Q. You were asked to furnish us a copy of the condensed balance-sheet from the general books on April 30, 1908, which was referred to in your testimony at a former hearing, and I ask you whether Defts.' Ex. CC—Gray is that copy.

A. It is.

Q. I notice on the left-hand side, I don't know whether you call it debit or credit side—

A. Debit side.

Q. —debit side, Northwestern Improvement Company, debenture bonds in hand of Guaranty Trust Company, trustee, $1,361,475.56. What is that item, what are those bonds?

A. When the St. Paul & Duluth railroad was purchased, it was purchased through its securities; there was an amount of preferred stock outstanding, which, under the plan of reorganization of that company, or, at any rate, in accordance with

the provisions made, could be retired at any time with the proceeds of lands of the land-grant of the St. Paul & Duluth railroad; in order to retire the preferred stock, the entire lands of the St. Paul & Duluth land-grant were purchased by the Northwestern Improvement Company, the money to make the purchase was loaned to the Northwestern Improvement Company by the Northern Pacific Railroad Company and the trade was consummated. Afterwards, when the St. Paul & Duluth division bonds were issued to purchase the common stock of the St. Paul & Duluth and for the purposes already described in the record, it was decided, in order to strengthen the lien of those St. Paul & Duluth division bonds, that a provision should be made by which the number of bonds outstanding would be reduced by the proceeds of the sales of the land-grant, and it was done by a three-party agreement, an agreement between the Northern Pacific Railway Company, the Northwestern Improvement Company and the trustee of the mortgage. This agreement provided that the proceeds of sales of land should be put into a fund and that this fund should be used to pay off the debentures that were given by the Northwestern Improvement Company for the money that it had borrowed from the Northern Pacific Railway Company when it bought the lands, and that then the money paid over on account of the debentures to the Northern Pacific Railway Company should be used to purchase outstanding bonds of the St. Paul & Duluth division mortgage at not exceeding 105 per cent. In that way the proceeds of the lands were used to reduce, on the one hand, the debentures given by the Northwestern Improvement Company for the money that it had borrowed from the Railway Company, and, on the other hand, it was used to reduce the indebtedness of the Northern Pacific Railway Company on account of this mortgage, thereby strengthening the lien of the remaining outstanding St. Paul & Duluth division bonds. Now, the amount that you ask me about represents the amount of debentures in the hands of the

trustee not so redeemed at that time.

Q. That is to say, that there was owing to the Northern Pacific Railway Company, on the date of this balance-sheet, from the Northwestern Improvement Company for moneys loaned the Northwestern Improvement Company to buy the Duluth railroad land-grant, $1,361,475.56?

A. That is right.

Q. And that was represented by debenture bonds?

A. Yes.

Q. I don't find in this balance-sheet anything that indicates to my mind or shows where you included the land-grant of the Northern Pacific remaining unsold.

A. It is not included in the balance-sheet. The land-grant is not represented by one cent of money upon the books of the Company, except as it is comprehended in a general way in the item of Northern Pacific Estate at the head of the debit column.

Q. Then, in addition to what is shown here specifically, there is other property of the Northern Pacific?

A. The land-grant we do not regard specifically as having any value until it is sold, and when it is sold it comes on to the books in the form either of contracts for deferred payments or for the cash received; and under the terms of the prior lien mortgage the net proceeds of lands sold must be used first, to a small extent, in the retirement of prior lien bonds, and all in excess of that can only be used for the purchase of new equipment or new property or the construction of new property, it must go back into the property, it cannot be used for dividends or for any other purposes of the Railway Company.

Q. But the fact remains that these prior lien bonds which have a claim upon the land-grant for payment, appear in this balance-sheet as a liability of the Company?

A. Yes.

Q. And that, in fact, the Northern Pacific Railway Company has a large amount of lands?

A. Yes.

Q. Part of its land-grant, which is an asset to meet that liability with, and which did not appear, or the value of which does not appear, upon this balance-sheet.

A. Well, to be exact, it is only an asset to meet that liability to a small extent. Perhaps I had better explain what that is. Article 8 of the prior lien mortgage provides that out of the net moneys proceeding from the sales of lands (and that net money not only includes the cash received for lands sold during the year but also cash that is collected as interest on outstanding deferred payments) one-half of the proceeds, but not exceeding $500,000 in any one year, is to be used in the purchase of outstanding bonds, and that is the largest amount that can be used in any one year for the retirement of the mortgage; but the excess amount can be used for the construction of new property, the purchase of new lines, the purchase of new equipment,—and, of course, by adding to the property the value of the prior lien bonds is enhanced.

Q. That is, by virtue of a contract between the holder of the prior lien bonds and the Railway Company, it can be so used and only in that way?

A. It is in the trust d[illegible] yes.

Q. There is nothing in the law under which the land was granted to the Railroad Company, nor is there anything in the charter of the Railway Company, which would preclude the use of that money or the proceeds of that land for other purposes, is there?

A. I am not very familiar with the charter of the Railway Company. It is in the record, and it is in this bound volume that we have here.

Q. But you don't know now of any legal limitation outside of the agreement made in the trust deed, which would prevent the use of that money for any legitimate purpose of the Railroad, do you?

A. Then, after the prior lien mortgage, comes the general lien mortgage, which runs for 150 years from 1897, so that in that way the use of the proceeds of lands for any purpose but for construction purposes is provided for for a long time to come.

Q. Yes, that is true, but the point I make is this: That on this balance-sheet you show those bonds as an obligation of the Company?

A. Yes.

Q. Now, there is in the hands of the Company or ownership of the Company a large amount of lands a part of which, at least, is an asset applicable to the payment of those obligations, and that land is not shown in this balance-sheet, nor any sum carried into the balance-sheet for it?

A. Well, technically, as I would understand it, the lands are the property of the trustee.

Q. Well, possibly that is true, but I doubt it.

A. I think the mortgage reads that way.

Q. Well, that might not make it so.

A. That the property has been "granted, bargained and sold," and so on, to the trustee.

Q. And to be used by the trustee in the ways you have specified?

A. For instance, the land commissioner of the Railway Company is, technically, the land commissioner or agent of the trustee of the mortgage.

Q. But it still is true, is it not, that those lands are a fund out of which the obligations of the Northern Pacific Railway Company, in part, at least, are to be paid?

A. Not until after 150 years from 1897.

Q. Why, you have just said that $500,000 a year of them should be used.

A. Of course, with that exception, having explained that I didn't suppose it was necessary to make the explanation now.

Mr. HOW: It applies only to the prior lien bonds.

Q. Even so, the general lien bonds run 150 years, don't they?

A. Yes, sir.

Q. And those lands the value of which is not included as an asset of the N. P. Railway Company in this balance-sheet Ex. CC—Gray, even under the trust deed or deeds you speak of, is an asset for the payment of those obligations at the end of 150 years if any of it remains undisposed of?

A. *If*, yes.

Mr. O'BRIEN: I thought the title of these lands was in the Northwestern Improvement Company.

Mr. HOW: No.

WITNESS: I thought I explained that, away back in June, Mr. O'Brien.

Q. Well, you may have, but I may have forgotten.

A. There was a portion purchased by the Northwestern Improvement Company, but not for any such reason as at that time you suggested in your question. The great bulk of the lands of the Northern Pacific Railway Company stands in the name of the Company and never has been, and probably never will be, in the name of the Northwestern Improvement Company.

Mr. O'BRIEN: I had occasion to examine those mortgages some time before, in a private matter, and I supposed for the convenience of disposing of the lands, and everything of that sort, the title had been put in the Northwestern Improvement Company.

WITNESS: I suppose there is no reason why I shouldn't explain to you why any of those lands came into the hands of the Northwestern Improvement Company.

Q. Well, the Northern Pacific Company owns all the stock in the Northwestern Improvement Company?

A. Yes.

Mr. O'BRIEN: So it is immaterial if the title is in the North-

western Improvement Company or the Northern Pacific?

Mr. DURMENT: Suppose we let him explain how any of these lands came into the hands of the Northwestern Improvement Company, and why.

WITNESS: At the time of the reorganization, there were outstanding about 1,755,000 bonds of the Missouri division which attached to certain lands—

Mr. HOW: Lands appurtenant to the Missouri division?

WITNESS: Appurtenant to the line over that division, and in order to get the mortgage out of the way, the lands were sold and the proceeds used to pay off the mortgage; that is all.

Q. And only those lands went to the Northwestern Improvement Company?

A. That is all.

Q. Well, did that include the coal lands?

A. No.

Q. It appears from the testimony of Mr. Cooper here that the most valuable coal lands of the Northern Pacific are in the name of the Northwestern Improvement Company.

A. That is so, but there was a company called the Northern Pacific Coal Company which purchased its lands and property; the Northwestern Improvement Company (I am not so familiar with its affairs, but it may have since absorbed the Northern Pacific Coal Company) may have purchased from the Northern Pacific Railway Company some pieces of lands containing coal, very likely it did. I am not familiar with the facts.

Mr. HOW: Small in volume?

WITNESS: It would be perhaps matters of forty acres, or something like that.

Mr. HOW: The large volume of the coal lands were purchased from outside parties, as I understand it.

Q. Well, Mr. Cooper says that more than half of fifty millions of it was the land-grant of the Northern Pacific Railroad Company.

1189

Mr. HOW: Does he say so?

Mr. DURMENT: Yes.

Mr. HOW: That wasn't my impression.

A. I am not familiar with that.

Q. There was a considerable part of the land-grant of the Northern Pacific in Minnesota that contains mineral, or known as mineral lands, wasn't there?

A. I don't know.

Q. Were any of the lands in Minnesota part of the land-grant of the Northern Pacific transferred to the Northwestern Improvement Company?

A. I do not remember of any of them being.

Q. Now, there are mineral lands included, quite a lot of them, in the N. P. land-grant in the far West, are there not; that is, land that contains minerals?

A. I don't understand that there is, or can be, except coal. My impression is that if any lands were found that contained minerals other than coal, the government would resume possession of them.

Q. Now, as to all the lands of the Duluth land-grant, they were conveyed to the Northwestern Improvement Company, were they not?

A. They were purchased by that company before the railway company was purchased.

Q. And are any of those mineral in character, or do you know?

A. Only in a general way, as anyone might know. They are believed to contain deposits of iron ore.

Q. They are not being worked at this time, or do you know?

A. I don't know.

Q. You don't know, or do you know, approximately, the number of acres of land-grant the title to which yet remains in the Northern Pacific Railway Company?

A. I don't remember with exactness; there are nine or ten

million acres, but if I were at my office I could lay my hand on it without turning around.

Q. This first item here, "Balance to debit of this account June 30, 1907, $311,575,980.51," is really the item of Northern Pacific Estate, $312,406,629.26, with which you opened the Northern Pacific books on September 1, 1896, reduced by some credits, is it not?

A. Reduced by the segregation of certain assets, and increased by items of construction and purchase from year to year.

Q. Then any value that is included in this exhibit CC for the Northern Pacific land-grant undisposed of, is included in that item of $311,575,980.51?

A. Yes, but not in any specific way.

Q. But only in the same general way that the item $312,406,629.26 with which you opened the accounts of the Northern Pacific Railway Company on September 1, 1896, included it?

A. Yes.

Q. And what, if any, reduction was made in that item of $312,406,629.26 for the land-grant which were sold or conveyed to the Northwestern Improvement Company—any?

A. Yes.

Q. How much?

A. Whatever they were sold for.

Q. Do you remember what they were sold for?

A. It was about $1,755,000 or $1,775,000.

Q. That is to say, they went to the Northwestern Improvement Company for the amount due on the mortgage which they were pledged to secure, is that it?

A. As a matter of fact, to be exact, they were sold to a third party.

Q. Who?

A. A man by the name of Horn, in New York. And, after the money was used for the purpose for which it was needed,

the lands were sold to the Northwestern Improvement Company by him.

Q. Who was Horn?

A. I never have met him, I am not sure who he was, but I have an impression that he was in the office of J. P. Morgan & Co.

Q. And do you know whether Morgan & Co., or the N. P. Railway Company, furnished the money which was used or supposed to be used by Horn to pay for these lands when bought from the Northern Pacific?

A. I don't remember just now. J. P. Morgan & Co. were fiscal agents for the Company. The money was paid, so far as the accounts are concerned, by Horn, for the lands. Just what steps were made to provide Horn with the money I don't recall now; I don't know that our books in St. Paul would show; perhaps they would, but I don't know that there is anything material about it. Horn paid the money for the lands to the Railway Company and the Railway Company used the money to pay off the bonds. Then Horn turned around and sold the lands to the Northwestern Improvement Company, and in that way reimbursed himself. Now, just what the particular *modus operandi* of handling the cash in that matter was, it is so many years ago, and, if I ever knew, I don't remember.

Q. You don't remember whether the money Horn used to pay for these lands was the Northern Pacific's money or Morgan & Co.'s money or his own, or whose it was?

A. I do not. It came to the same thing in the end.

Q. Well, possibly.

A. Necessarily.

Q. Do the Northern Pacific Company's books contain a list of the assets and liabilities of the Northwestern Improvement Company?

A. No.

Q. Have you them in your control or possession so that you

could furnish them?

A. No; I am not an officer of that company. Mr. Elliott, the president if the Northern Pacific Railway Company is, but the books and records are kept at Tacoma.

Mr. DURMENT: We would like to have a list of the assets and liabilities of the Northwestern Improvement Company. Will you furnish it to us, Mr. How?

Mr. How: I haven't any idea whether I can or not.

Q. Can you furnish it to us, Mr. Gray?

A. I am not an officer of that company, and—

Mr. How: I don't represent anybody who is an officer of that company, and I don't know whether I can or not.

Mr. O'BRIEN: We have now shown, may it please the Court, there is a statement here from the Road, at least, as to what the total value of what Mr. How designates as the "operating tool" of the Northern Pacific system. We have a statement as to their funded indebtedness and the amount of the capital stock; we also have a statement as to the net cash invested in that System, but we have no statement as to the value of the additional properties owned by the Northern Pacific. Now, those consist mainly, I imagine, of the land-grant still remaining undisposed of and the assets of the Northwestern Improvement Company, and while we don't want to encumber the record by going into a detailed examination of those matters, as we are advised at present, probably will not question the statement that we received, still, in order to complete the entire history and the story, that evidence ought to be produced, and with those elements proved we will have, in a very concrete form, the history of the Northern Pacific. And unless it will be done by the officers, it will necessitate our taking evidence. It appears that all of the stock of the Northwestern Improvement Company is owned by the Northern Pacific,—

Mr. DURMENT: And all the bonds, as I understand it.

Mr. O'BRIEN: —and all the bonds; so that it is practically

the proprietor. Then, in addition to that, there is the interest of the Northern Pacific in the Burlington road. In fact, all of the property of the Northern Pacific Railway Company, outside of what has been described as the "operating tool," ought to be shown in a separate statement; and we shall feel obliged to take evidence to prove that unless Mr. How can see his way clear to furnish it to us, and I have no doubt he could do it very easily.

Mr. How: In the first place, I am not advised as to whether or not I can do it; in the next place, I want to consider whether or not I shall want the question determined as to whether it is material in this law-suit to go into that sort of thing. If the purport of that evidence is to show, or if it is claimed that the evidence will tend to show, only that the Northern Pacific Railway Company does not need to make any income out of its operation because it has got enough to live on outside of its operation and we are going to spend some considerable time, perhaps weeks, in going into the value of its outside assets not used in the operation of the road, it may be that I shall want to take the position that I don't want to do it and that in this case it is not material. I may want to take the position that it doesn't make any difference what income the Northern Pacific Company gets from outside investments; that it is entitled to earn a fair income through the operation of its road and by charging rates and that it need not pay passengers to travel over its road if it has got money enough from outside sources so that it can afford to do so. Now, I don't know, I shall want to consider and to be advised with regard to that, and to consider how long it is going to take to go into all these things.

Mr. DURMENT: Well, let me suggest to counsel that even though he take that position as to the final purpose or effect of the evidence, yet it is legitimate cross-examination, it seems to me, because, on the exhibits they have put in already, they have included among their assets and values the bonds and

stock of this Company at a certain figure; they own the whole of the bonds and the whole of the stock, and it is perfectly proper for us to find out, as a matter of cross-examination, regardless of what would be the result in the end, as to whether that stock is worth that much or whether it is worth three times that much, or less, and the point that counsel says he may want to make will not be waived at all by furnishing us the information, and a good deal of time and trouble for both sides will be saved by furnishing it.

Mr. HOW: I do not apprehend that if the statement of the Northern Pacific's assets and balance-sheet, (which I didn't introduce but which they introduced, they say that I introduced it, I didn't; they did), if it has been introduced at all, I do not apprehend if that balance-sheet showed, for instance, the ownership by the Northern Pacific Railway Company of a hundred shares of Pennsylvania Railway Company stock, that this court would sit to go through the assets and liabilities of the Pennsylvania Railway Company, for instance, because it was proper cross-examination. But I do not take any position on that at all, because I don't know how much trouble it is going to be and don't know but that the easiest thing for us to do is to submit, but I shall have to be advised with regard to that. It may be I shall want to have the question determined as to whether or not it makes any difference or is material in this case in order to test the sufficiency of rates, and the question of whether or not there is any interference with the power of Congress to make rates, what the Northern Pacific has got by way of outside investments which are not used in the operation of the road.

Mr. O'BRIEN: Of course we don't expect Mr. How, who represents only a stockholder, to be able to promise at this time that that will be done, but it seems to me that we can save a good deal of time; it has been a very difficult case to present, and we shall expect that Mr. Elliott, for instance, will be in a posi-

tion to answer that question. Now, Mr. Elliott is going on the stand, and he is the President of both of these companies, the Northwestern Improvement Company and the Northern Pacific Company—

Mr. HOW: Oh, I will say this,—

Mr. O'BRIEN: —and we shall expect Mr. Elliott to be able to answer that question. Now, if it is on cross-examination, that is our testimony. We don't care who presents the testimony, and, as I say, I imagine that we will be very glad to take Mr. Elliott's word on that, as we have taken Mr. Gray's word on matters within his own knowledge, and I have no doubt about that. But Mr. Cooper, in his testimony, claimed fifty million dollars as the value of the coal lands, and went into an elaborate explanation of how the ownership of those lands reduced the cost of operation upon the Northern Pacific road as a result of economy, and there can't be any question that if it is proper to show the whole value of this road and what the original investment was, it is also proper to show that, as a result of this gigantic enterprise, many millions of dollars in property not used for railroad purposes has been accumulated—perfectly legitimately accumulated, let us admit, but still accumulated,—and the story is not complete without that. Now, it will be a couple of weeks before Mr. Elliott goes upon the stand and we simply desire to notify the counsel that we shall ask him that question, and I think that Mr. Elliott ought to be prepared to answer it so we can save time.

Mr. HOW: Well, I will say this, with great pleasure: that if it is considered proper that they should have testimony of this kind, I shall do all that I can to save them all the time and trouble that I can in producing it, of course.

The MASTER: Are those coal lands in the name of the Northwestern Improvement Company?

Mr. HOW: The Northwestern Improvement Company; but my distinction is clear, I hope. Those lands are used in the

operation of the road just exactly the same as if the title was in the name of the Northern Pacific. The Northwestern Improvement Company holds them and uses them for the purposes of the operation of the road. That is my distinction. Now, they want to go into other assets that the Northwestern Improvement Company may have which are not used in the operation of the road and haven't anything to do with the question of these rates, directly or indirectly. Unless, I say, it is competent for them and it is material for them to show that the Northern Pacific Company has income so that it does not need to charge the people for transportation—

Mr. O'BRIEN: Of course, if your theory of the case is correct, Mr. How, you should have demurred to our answer and stood on your demurrer, if it is a question of the right of the State to regulate in a proper case, and what is a proper case can only be determined by all the circumstances.

Mr. HOW: We could not demur to your answer. You denied that you interfered with interstate commerce. If you admit that, I will demur now.

The MASTER: This has occurred to me. The Complainant in this case, for instance, is assuming that the rates should be established with reference to the revenues derived from the proper and legitimate operation of the road. Now, it appears in the course of the testimony, that the Company has large quantities of other assets, and if it should be ultimately held that it was proper to take those assets into consideration as bearing upon the question of rates, will not every presumption be made against the Railroad Company, and will it not be assumed, if it is proper that those matters should be brought into consideration here as bearing upon the rates, that they have failed to make a case in all its details?

Mr. DURMENT: Well, the courts have frequently said that in their decisions, and as I read them they have frequently held the other way in their conclusions, so that we don't know just

where we are.

The MASTER: That is, whether the duty won't be on you to go on and make this showing?

Mr. DURMENT: Yes.

The MASTER: That is, whether the Court will presume anything with reference to the value of those properties?

Mr. DURMENT: Yes.

The MASTER: Although it appears that there are, we will say, large quantities of property, it throws the burden on you to show that the rates should be reduced by virtue of the value of those properties?

Mr. DURMENT: Yes; I think it is doubtful what a court would do under the circumstances, and our position is this: that it already appears in this case that there is no such thing as the Northwestern Improvement Company except as a mere matter of book-keeping for the Northern Pacific; that the Northwestern Improvement Company is in fact just as much a part of the Northern Pacific as its railroad is, as its land-grant is, as its book-accounts are, but it is simply a means by which they can, and do, for their convenience, carry and cover up or segregate a certain amount of their property, and in it they might have any amount of stuff that has been the proceeds directly of the operation of this road or of the land-grant, or any amount of assets which we would have a right to have considered in the question of what would be a fair return and upon what amount they should have a return.

Mr. O'BRIEN: The theory of these cases (in reply to the suggestion that your Honor made) to my mind is this: that where the State has relied upon the presumption as to the validity of the rates (the sufficiency of the rates) and has simply contented itself with denying the sufficiency of the tables and statistics produced by the company contesting, they have failed. The only instance that I know of where that was not the case was in the case of the Minneapolis & St. Louis against the State,

in which there was no testimony introduced in behalf of the State, but the State contented itself with analyzing the proof produced by the company and claimed that the presumption was not overcome, and Judge Bunn so held; and that ruling was sustained clear through to the supreme court, that the presumption was not overcome. So that we have felt that it was necessary for us not only to claim that the proof produced was not sufficient to overcome the presumption, but to go further and show what all the facts are, and our intention is in this record to establish all of the facts and circumstances, if possible. The cases are too important to justify us in simply resting upon the theory of a presumption when the facts are within reach and may be produced, and then the responsibility is not with us, if all the facts are produced.

The MASTER: Well, it simmers right down to this, doesn't it, gentlemen, that you have made your suggestions as to the evidence that you desire them to produce, assuming that they are able to produce it. If it is not produced by them, you will feel under obligations—

Mr. DURMENT: To go after it.

The MASTER: —to take it yourselves, but you wanted to notify them so that they could produce it. It might be a great convenience to all parties, and save a great deal of trouble in the matter, but if it is not produced you will expect to produce it yourselves.

Mr. O'BRIEN: Yes, we want, with just as much courtesy as possible, to give that notice to Mr. How, and ask him, if this statement is produced by Mr. Elliott or any other witness he produces, to produce it somewhat in detail—the number of acres of land in the different states, with the valuation of them, and the assets of the Northwestern Improvement Company, segregated to a certain extent, so that it will be more or less complete; and as I say, I have no doubt that that will end the matter.

Mr. HOW: I declare this, as usual,—and I think in accord with the attitude I have taken from the beginning—that if we furnish them with any evidence with regard to any of these other enterprises, whether we do it willingly or unwillingly, if we do it we will save them all the trouble we can in getting at the facts, give them all the assistance we can. Now, I feel sure that I can carry that out; so far as I personally am concerned, of course, that will be done. But now do I understand, as it has been intimated here, that counsel for the State desire to go into the assets and liabilities of the Chicago, Burlington & Quincy Railway Company, also, and are we going to be forced to prove the physical value of that property?

Mr. DURMENT: Well, if you say that that road is simply a holding company for the Northern Pacific, yes. If it is not, no. But that is what the Northwestern Improvement Company is, you know.

Mr. HOW: The Chicago, Burlington & Quincy does not own its stock.

Mr. DURMENT: Yes, that is the difference between them.

Mr. HOW: As I understand that, the railroads, Northern Pacific and Great Northern own this stock; now, the Northern Pacific owns the stock of the Northwestern Improvement Company.

The MASTER: Well, that has not been brought into this case at all as yet.

Mr. HOW: Well, they have intimated that it is coming in.

The MASTER: No, but I mean as yet.

Mr. O'BRIEN: It is in this balance-sheet Ex. CC. Now, the Attorney General, Mr. Durment and myself have not consulted particularly upon this question, and I don't know whether we are fully agreed, but this is my idea of the matter: that this case ought to be boiled down as much as possible; under any circumstances, we have a very long record and a very large and involved record, and that both parties ought to try to agree

to get as many statements which can be agreed upon and accepted as possible. We have done pretty well so far; we have now a statement as to what the reports show as to construction account; we have a statement as to what the net investment is outside of the land-grant; and we shall gradually get more statements and bring the matter down so that we will eventually have the gist of the testimony in a series of tables, I hope, from which it will be comparatively easy to determine the facts. Now, these additional assets are one element in it, and if they will present a table fairly elaborate, with the values segregated, vouched for by one of these reputable gentlemen, I have no idea, at this time, that we shall feel it necessary to go into any detailed examination of that, certainly no such thing as the value of the Burlington road, or anything of that sort; but the financial history of this road since 1864 is not complete without a statement of its entire assets, it is being left open, that gap ought to be and must be closed.

Mr. HOW: But where do I stand? I am called upon to prove the value of the Northern Pacific property upon which it thinks it is entitled to a return; they inquire into other assets; have I made my case unless I prove the value of those assets? Must I not determine whether those other assets are material at all to this case, or must I not, in careful management, prove everything with regard to them, if they come into the case?

The MASTER: They suggest, as I understand, that there may be some question, when it appears that there are other assets, and when they are claiming that those assets may have a bearing upon the rates that may be charged, whether it is not incumbent upon them to go farther and show the character and value of those assets.

Mr. HOW: But is it incumbent upon me—I want to consider that—if they are material at all in the case, is it not incumbent upon me, in proving my case, to show the value?

The MASTER: They say that is just where the trouble is, in some cases it is intimated that that is the rule and in others it is intimated it is not the rule.

Mr. HOW: I don't know but what I should want to take my position that they were not material and get a ruling upon it in order to save any uncertainty as to how I ought to proceed in regard to them.

The MASTER: Well, I understand Mr. O'Brien to say that if you do not furnish this testimony they are going to hunt it up.

Mr. HOW: Yes.

The MASTER: In this case.

Mr. HOW: But I think in all probability, then, I could get the ruling of the Court as to whether or not it was material.

Q. I notice on the right here "Northern Pacific-Great Northern joint C. B. & Q. collateral bonds." That means, as I recall some of the former testimony, that the Great Northern and the Northern Pacific guaranteed the payment of that amount of C. B. & Q. bonds?

A. No, they issued the bonds jointly.

Q. That is, the three roads, or the two roads?

A. The two roads.

Q. The Northern Pacific and Great Northern?

A. Yes.

Q. Those bonds were secured by what, if anything?

A. By the capital stock of the Burlington road as collateral.

Q. And they are not in any way a charge against the operating properties or the land-grants (I mean by that a specific lien) of the Northern Pacific road?

A. The amount of bonds issued and outstanding are exactly twice the amount of the capital stock of the Burlington owned by the two roads; the Burlington pays eight per cent on its capital stock, and the two roads pay four per cent on their bonds, and one washes the other.

Q. Yes, but there is no mortgage upon any of the proper-

ties of the road other than the stock to secure it?

A. No.

The MASTER: But a personal liability?

Mr. DURMENT: Yes.

WITNESS: But the stock, held as collateral, is the only security for those joint bonds.

Q. Except the personal liability of the road?

A. Of the two roads, yes.

Q. Now, does this $109,114,309.76 on the left-hand side of the balance-sheet represent the par value of that stock?

A. No, there is about a million and a half dollars there for expenses in connection with the securing of the stock and the issue of the bonds and commissions and interest and printing and various items in this. The excess of the one hundred and nine over the one hundred and seven represents the cost to the company.

Q. Yes, but is the 107 of that 109 million the par value of the stock?

A. It is. We bought the stock at 200, virtually.

Mr. HOW: He asks if this is the par value of the stock.

A. That is our half of it.

Q. This is your half of the par value?

A. The par value of the stock was $107,613,000, and 109 million dollars is what our one-half of the stock cost.

Q. Oh, yes. That is, your Road paid $107,613,000 in its bonds; or, at least that is half, of the total amount of bonds—

A. Yes.

Q. —issued, for a half interest in $107,613,000 par value of the capital stock—

A. Yes.

Q. —and the Great Northern road—

A. Should have a corresponding—

Q. —issued $107,613,000 of the bonds, or, jointly with your Company, issued double that?

A. Yes.

Q. And it acquired a one-half interest in capital stock of the par value of $107,613,000?

A. Yes.

Q. That is, you practically gave two for one in bonds; that is, you gave two in bonds for one in stock?

A. That was the intent.

Q. Now, I find also down here under the head of Sundry Assets,—I don't quite understand how that would be included as a liability offsetting the left-hand side, or would it?

A. That Sundry Assets is no part of the balance-sheet. You asked for certain pages of a book that I had, and we put it on this sheet for convenience.

Mr. How: The account is balanced before you get to the Sundry Assets.

Mr. DURMENT: Yes, I notice that.

Q. Now, I notice here "Treasury Securities" on the left-hand column amounting to $17,217,933.46.

A. You will notice that that agrees with one item in the middle of the balance-sheet above.

Q. On the same side?

A. Yes, it is an explanation.

Q. So that is included in this total?

A. Yes.

Q. It is a detail of one of the items in that?

A. Yes.

Q. Now, how about the Sundry Assets on the right-hand column, do they appear on either side of the balance-sheet proper?

A. Yes.

Q. Now, where?

A. You will notice an item there, the first bunch of accounts is called cash in hands of trustee of sinking fund $720,792.64, and that is the details of an item which you will find over here

somewhere (pointing).

Q. Then these Sundry Assets, as well as the Treasury Securities, (that is, the matters under those heads) are details of items on the left-hand side of the balance-sheet?

A. Yes.

Mr. DURMENT: We offer in evidence this Ex. CC—Gray as a part of the cross-examination.

Mr. HOW: It is objected to as immaterial.

The MASTER: Objection noted.

Q. Now, I call your attention to Defts.' Ex. AA—Gray, Supplement. This sheets shows the roads wholly or partly acquired by the Northern Pacific Railway Company up to April 30, 1908, also the capital stock and bonds of such roads so acquired, the disposition made of the bonds and stocks of those roads and the amount and character of the payments made by the Northern Pacific Railway Company in the acquisition of them—

A. Yes.

Q. —and also a statement as to the character of the interest of the Northern Pacific, that is, as to whether it is simply the owner of capital stock in the corporation owning the roads, or whether it has acquired the properties by deed?

A. Yes.

Q. As well as some other things that are apparent upon the exhibit itself?

A. Yes.

Q. I notice in the column "Paid in cash" on the first sheet of that exhibit, certain figures in red. There is a notation at the bottom of the exhibit with reference to it but that notation does not make clear to my mind what these red figures mean and how they come to be there; will you please explain?

A. Those would be in cases, probably, where the lines were built by the Company itself and the proceeds of the bonds would be in excess of the actual expenditure. Therefore we have given

credit in the statement for such excess in the cash column.

Q. Oh, that would be in case where the acquired road was paid for out of bonds issued by the Northern Pacific Railway Company—

A. Yes.

Q. —and the bonds issued were in excess of the cost of the construction of the road—

A. Yes.

Q. —to the extent indicated by the red figures?

A. Yes.

Mr. DURMENT: We offer in evidence, as part of the cross-examination, Defts.' Ex. AA—Gray, Supplement.

Q. Will you refer to Ex. BB—Gray? This exhibit is the entry with which the books of account of the Northern Pacific Railway Company were opened on September 1, 1896, is it not?

A. Yes.

Q. As I remember your testimony at a former hearing, this item of Northern Pacific Estate, $312,406,629.26, was not an amount taken or arrived at with reference at all to the value of the properties,—

A. That is right.

Q. —but it was taken as the proper amount to balance or offset the liabilities of the Company; that is, by liabilities meaning the capital stock and the bonds that the reorganizers considered necessary to issue in order to acquire the properties?

A. Yes.

Q. And the debts they assumed as a part of the acquisition?

A. Yes.

Q. Now, I notice here "Capital stock, $154,995,700" and that shows the amount of it which is common and the amount which is preferred?

A. Yes.

Q. Then "Prior Lien, 100 years four per cent gold bonds $78,659,100," and this explanation, "For amount of these bonds

to be issued to carry out plan of reorganization, including the additional bonds necessary to retire the outstanding general first mortgage bonds, on the basis of $1,300 to $1,000, namely, $16,142,000 at thirty per cent—equal $4,842,600." What is meant by that "including the additional bonds necessary to retire the outstanding general first mortgage bonds," and so on?

A. The general first mortgage bonds were six per cent bonds. Provision was made in the prior lien mortgage for the retirement of those bonds, (of the prior lien mortgage four per cent bonds,) at the rate of $1,300 for each thousand dollars.

Q. That is, $1,300 of the—

A. Of the prior lien for each thousand of the general first mortgage; and it being provided by the prior lien mortgage that this not only could be done but would be done, provision was made for it in this opening entry as stated.

Q. Well, what does the thirty per cent mean?

A. It is thirty per cent of sixteen millions.

Q. Oh. Then I see where I was misled. I find further down, "General first mortgage bonds, Northern Pacific Railway Company, for bonds of Northern Pacific Railroad Company outstanding September 1, 1896, assumed by this Company, $16,142,000."

A. Yes.

Q. Now, that is the par value of the general first mortgage bonds—

A. Assumed.

Q. —assumed, and would be properly carried in as a liability to the Company at that amount?

A. Yes.

Q. But in addition to that, the Company assumed a further liability of $4,842,600 for the additional 300 bonds that it would issue for each thousand of that par value; is that it?

A. It made that provision, which of course could only be

availed of as the general firsts were retired, and as they have all been retired, the account is on the basis now of so many of the prior lien bonds outstanding.

Q. But what I was getting at was this: That this $4,842,000 is really the premium in prior first lien bonds on the $16,142,000 of the old bonds?

A. I may explain that bonds were being offered from time to time to the holders of the outstanding general first mortgage bonds. It was considered desirable to retire them, and the holders were offered, for instance, for a certain length of time, $1,300 bonds of the new bonds in exchange for their bonds, for each thousand dollars, and that was offered in diminishing amounts until finally the whole issue was retired.

Q. Yes, but this $4,842,600 here represents the "$300" only?

A. Yes.

Q. And not the $1,300?

A. Not the 1,300, no.

The MASTER: Represents what?

Mr. DURMENT: The $300 in the $1,300.

The MASTER: Yes.

Mr. DURMENT: And not the thousand.

The MASTER: That is practically the amount of premium?

Mr. DURMENT: Yes.

WITNESS: May I add a further word as to that?

Q. Sure.

A. That any profit that accrued to the Company by reason of this "premium," as you call it, of $300 on these bonds, went back into the property through the cash fund, could only be used for the acquisition or construction of additional property, under the terms of the mortgage.

Q. I don't see how any profit could accrue to the Company on it.

A. Oh, there was, because some of these bonds were purchased at less than $1,300.

Q. Oh, I see. In your statement of the financial history of the Northern Pacific road, read into the record at the 26th day's hearing, on page 1092 of the transcript, I find that in figuring the profits or losses, whichever they were, to the syndicate on the reorganization, you gave certain market values, which appear to have been about the first market values fixed upon these various stocks and bonds.

A. Those were the first that we could find in the financial chronicles.

Q. Now, I find that the prior lien bonds were at 85⅞ on the market.

A. Yes.

Q. At that rate, what would be the amount of this $78,659,100 par value of prior lien bonds?

A. $67,548,502.12.

Q. I find by referring to page 11 of the printed report of the Northern Pacific Railway Company of June 30, 1897, that there were reserved prior lien bonds to retire $1,776,000 of Missouri division mortgage bonds and $16,142,000 of the general first mortgage bonds and $420,000 of the Western Railroad, Minnesota first mortgage bonds, and $8,003,000 of the St. Paul & Northern Pacific Railway Company general first mortgage bonds which had been assumed by the Northern Pacific Railway Company?

A. Yes.

Q. And prior lien bonds to the amount of these bonds so assumed have been issued to take them up, I suppose?

A. Oh, no.

Q. No?

A. Not until they are retired. For instance, the eight million three thousand there, won't be retired, I think, until either 1921 or 1923.

Q. Then these bonds which were reserved to retire those, are still held by the Company?

A. Probably have not been printed yet.

Q. Probably haven't been issued yet at all?

A. No.

Q. In order that there may be no misunderstanding, if they come to examine this Ex. BB and page 11 of that report, because of the discrepancy in the figures, will you explain how it is that there is a slight discrepancy between the figures as shown in that report and the figures shown in Ex. BB?

A. That entry was made as of the 1st of September, 1896; the report was made as of the 30th of June, 1897, ten months later; there were some changes took place during the ten months.

Q. And the same items are referred to in this page 11?

A. Yes.

Q. And that accounts for the difference in the amount?

A. Of course the differences can be traced through the books.

Q. Now, I notice that the first market on the preferred stock was 36?

A. Yes.

Q. What would be the value of the 75 million at 36?

A. Twenty-seven millions.

Q. And the first market on the common stock was 12¼; what would be the value of the $79,995,700 common stock at 12¼?

A. $9,800,000.

Q. The first market on the general lien bonds was 51; what would be the value of the fifty-six millions general lien bonds at 51?

A. $28,560,000.

Q. That would give a total market value at that time of the capital stock and bonds of the road of what?

A. $132,908,000, not including the assumed bonds.

Q. And the total of the assumed bonds, please?

A. $26,341,000.

Q. Then if you should assume that the market value of the stocks and bonds of the corporation were a fair test of the values of its properties, the value of the properties of the Northern Pacific Railway instead of being $312,406,629.26 would be $163,249,502.12?

A. I make it even less than that.

Q. Well, provided we carry the assumed bonds at par.

A. Yes, I put it in at par.

Q. Then what did you make it?

A. $159,249,000.

Mr. DURMENT: Well, I will take your figures then. We offer in evidence as a part of the cross-examination this Defts.' Ex. BB—Gray.

Q. Can you tell us what the quotations on these stocks and bonds were for a week after this date when you found your first quotation?

A. I couldn't tell you now.

Q. Don't remember how it ran?

A. I think some of them were less; I think they were lower than those rates later on, some of them.

Mr. HOW: Common went down to 10¼.

WITNESS: Some of them were lower, I know.

Q. You don't know what they were, though?

A. No.

RE-DIRECT EXAMINATION.

By Mr. HOW:

Q. Mr. Gray, the financial history, at least a portion of the financial history, given by you in a former hearing, is devoted to showing what securities the syndicate received, both under section 1 and section 2 of the syndicate contract; resort to table 4 of the report of the reorganization managers to the Northern Pacific Railway Company, under date of April, 1907, shows that there was sold to the syndicate $10,880,900 of common stock; that $10,880,900 of common stock represents the entire

amount of common stock which the syndicate agreed to take under section 1 of the syndicate contract, less that which was necessary to take up or to permit all holders of common and preferred stock to avail themselves of the privilege awarded to them in the syndicate contract?

A. Yes.

Q. Now, is it not apparent to you, that if that is the fact the difference between $10,880,900 and the $77,500,000 which the syndicate agreed to take, in section 1 of the syndicate contract, was either sold by the syndicate managers at $15 a share—in which case that $15 was credited to the syndicate upon the nineteen millions odd which it was to pay under section 1 of the syndicate contract—or, the syndicate took it and did not receive that credit of $15?

A. There is an unexplained item, as was shown yesterday in regard to this matter; the statement No. 5 shows that the common stock—

Q. You mean in the report?

A. In the report of the reorganization managers, (and that is the only source that we possess of knowledge in regard to the transaction between the reorganization managers and the syndicate,) that the common stock deposited by the public was only $42,114,900, and one-half of the preferred stock deposited by the public would be $16,856,565 more, which would only make about 59 millions of common stock accounted for through deposits by the public, while the report of the managers states that there was used for conversions and assessments 66 millions, or between six and seven millions more.

Q. Now, in preparing this statement (this financial history) you assumed that the amount recited to have been sold to the syndicate was the only amount received by the syndicate, of common stock; I refer to common stock.

A. Yes, sir.

Q. And if that is true and the balance of the $77,500,000

purchased by the syndicate under section 1 of the contract was used for conversions and assessments, the syndicate was credited with $15 a share for that balance?

A. Was entitled to a credit of $15 a share for that balance.

Q. Now, if it was not used and the syndicate got it, it did not get that credit?

A. It would not have been entitled to the credit.

Q. Now, figuring the statement of the syndicate profits on the basis that they did get it and were not entitled to the $15 credit, and on the basis of the opening market price of the common stock, the syndicate profits in the transaction were even considerably less than those shown in the statement contained in your financial history; isn't that the fact?

A. You are assuming now that the syndicate got this six or seven millions of common stock that is unaccounted for?

Q. Yes, that they got that seven millions at 12¼.

A. Well, I haven't figured it out.

Q. And were not credited with the $15 a share?

Mr. O'BRIEN: They got it at $15 a share if they got it.

WITNESS: If they got it they got it, and not at any particular price; and the question of what it was worth to them would be what they would sell it for.

Q. My question is this, and it seems to me to carry its own answer; if they got it they were not credited with $15 a share.

A. That is right, to that extent, yes.

Q. Now, if they got it, the opening price of it in the market was 12¼; now, figuring that price on the opening price at the market, they were worse off to have got it at 12¼ than not to have got it and been credited with $15 a share?

A. That is my impression. The discrepancy is not very large, but if you had let me know that you were going to ask about it I would have figured it last night and made a statement of it, but figuring it in my mind I think that if we assume that that stock had actually been turned over to the syndicate

and a corresponding amount at $15 a share deducted from the other amount, I think it would have made a smaller showing of profits. I don't know whether it is worth while wasting the time to figure it because I haven't much respect for either of those statements.

Q. The fact is we do not know which of those conditions is true. What I am trying to indicate is that in that financial statement we took the one that was against us; that is, in our view of trying to show that syndicate profits were as small as they ought to be, we took the horn of the dilemma that was against us.

A. I have figured the thing in three ways, and now I will figure it in a fourth, but it will take a little time to do it, but I don't know that it will ever reach the case,—just for my own satisfaction. I figured it on the basis of applying these rates to Ex. Y made by the State, in the first instance, and that shows that the syndicate would have received in profits $3,048,000.

Q. The trouble with that Ex. Y was that it omitted the purchase of bonds under section 2 of the syndicate contract disclosed by the report of the reorganization managers to the Railway Company in April, 1907?

A. Yes. Then I figured it just putting in the stocks that were said to be sold in this report to the syndicate and assuming that the amount that they received at $15 and $10 respectively was the amount applicable to the deposits by the public, and that made their profits only between fifteen and sixteen hundred thousand dollars. Then I figured it in this last way (which seems to me the most correct of any) which shows 27 or 28 hundred thousand dollars profits to the syndicate. But, as I said yesterday, both the State's statement and this statement are hypothetical, and I haven't much use for a hypothetical statement. I think the state exhibit is a little the worse of the two, because it assumes, at the outset, for instance, the syndicate agreement provided that the thing was to be

wound up within a year or so, and the prices never at any time were anywhere near par within a year or so. The State exhibit assumes that the securities were worth par, and it was some years before they got anywhere near par.

Mr. O'BRIEN: Probably if the people who made the transactions and who know the facts would testify, Mr. Gray, either you or the State could get up a statement that would be more desirable, couldn't it?

Mr. HOW: Well, I haven't a doubt that I shall show up what actually occurred. I have great confidence that there was nothing dishonest in it.

WITNESS: I don't think it makes any difference what they made out of it.

Q. In any statements that you have produced from your books with regard to trial-balances or anything similar, I take it that you have not undertaken to show anything in the way of the actual value of the property of the Northern Pacific Railway Company?

A. I have no knowledge of the actual value, and have made no attempt to show it, in any shape or form.

Q. Then when you open your books with Northern Pacific Estate at such and such a figure, that is merely a bookkeeping entry and has no relation whatsoever to the physical value of the property?

A. I don't quite like the expression "merely a bookkeeping entry," because it is opening the books with an estate which the Company has obligated itself to make good, either in the form of repayment, as in the case of the bonds which must be paid at a certain time, or in the payment of dividends on the stock.

Q. That is true, but it has no relation to the actual physical value?

A. It has no relation to the actual physical value.

Q. And never intended to have. (No answer.)

By Mr. DURMENT:

Q. I gather, Mr. Gray, from your testimony yesterday and your answer now, that the theory of the books of the Northern Pacific is that every time there is a liability created there must be created, upon the books, at least, or centered upon the books, at least, a corresponding asset?

A. The fundamental theory of double-entry bookkeeping is that every debit must have a credit.

Q. And every time, then, you would enter up, (I don't know about debits and credits) every time you put on the books a liability of the Company, there must be—

A. There must necessarily be a corresponding asset.

This case was here adjourned until October 16, 1908, at 10 o'clock A. M.

FEDERAL BUILDING, St. Paul, Minn., Wednesday A. M., November 18, 1908. Hearing resumed pursuant to adjournment.

Mr. How, on behalf of Complainants in Kennedy et al. v. Great Northern Railway Company, et al., requested that the Master set December 7th as the date for beginning the taking of testimony in that case.

Counsel for defendants objecting to this course, the Master suggested that the matter be submitted to the Court for the purpose of determining whether or not the Master should conclude the taking of testimony in the Northern Pacific and Minneapolis & St. Louis cases before beginning the taking of testimony in other cases.

Mr. O'Brien announced his desire to have the matter so referred.

HOWARD ELLIOTT,

sworn on behalf of Complainant, testified:

By Mr. How:

Q. Will you state your name, your age and your present residence, Mr. Elliott?

A. Howard Elliott, will be 48 in December, reside in St. Paul.

Q. And what is your occupation?

A. I am President of the Northern Pacific Railway Company.

Q. How long have you been in that position?

A. A trifle over five years.

Q. Will you state, in detail, what your experience in the employment of railroad companies had been prior to your becoming President of the Northern Pacific Railway Company?

A. I was educated as a civil engineer at the Lawrence scientific school in Cambridge, Mass.

Q. That is a department of Harvard university?

A. Harvard university; and prior to and shortly after graduation I had employment with the C., B. & Q. Railroad in the engineering department on construction and survey work; after that I did clerical work in the vice-president's office for a short time, then I was made the accounting and financial officer of a small group of roads, with headquarters at Keokuk, Iowa.

Q. Belonging to the Burlington system?

A. Belonging to the Burlington system. In that position I had entire charge of the methods of accounting and the keeping of all accounts in regard to expenditures from I think the 15th of November, 1882, until some time in 1887. At that time I became general freight agent and general passenger agent of the same group of roads, nearly five hundred miles, and in

that capacity had general charge of the commercial business in that vicinity until 1891, I think it was. At that time there was a large amount of mileage added to my territory, making the total something over one thousand miles, and I dropped the passenger part of the work and had charge of the freight, not only for the particular one thousand miles, but had general charge of all the Burlington business south of the Ohio river and south of Kansas City. I held that position until 1896. At that time I was made general manager of the same group of roads, having charge of all departments, and held that position until 1902. Then I was made vice-president of the entire C., B. & Q. property, with headquarters at Chicago, having charge of all the operating and construction work of the C., B. & Q., and I held that position until I was elected President of the Northern Pacific, in October, 1903, since which time I have been connected with this Company here.

Q. Can you state, approximately, what the gross earnings of the Burlington system were at the time you entered its employ?

A. Well, in the neighborhood of twenty or twenty-one million dollars, as my recollection goes.

Q. Can you state, approximately, what it was at the time you left that road?

A. Something over seventy millions, I think.

Q. The road had developed and grown, then, from a gross earnings of twenty millions to a gross earnings of seventy odd, during your connection with it?

A. Yes, sir.

Mr. How: And that is offered, not to show that that was due to Mr. Elliott, but to show that he is familiar with a growing system.

Q. It is perhaps unnecessary to ask you if you consider yourself familiar, and fully familiar, with the present Northern Pacific System, but I do ask that.

A. Well, I am as familiar with it, I think, as anyone could be in five years. I have traveled in that five years nearly 200,000 miles and a large amount of it over the Northern Pacific.

Q. You have been over the entire System a number of times?

A. A great many times.

Q. I show you Complainant's Ex. 1—Darling, which purports to be a map of the Northern Pacific System, with certain colors representing different portions of the line. Will you examine that and state what those colors indicate?

A. This map represents a reference map which we have in our various offices in an effort to manage the road efficiently and economically. It shows, first, the entire mileage of the railroad, in skeleton form, and then it shows, in these different colors, what we term operating divisions, each one of which is a unit of operation and is in charge of a superintendent and such other officers as are necessary under him for the purpose of handling the business of the Company on that particular operating division.

Q. How many operating divisions are there in the Northern Pacific System?

A. Now, let me see. I will have to count, I don't remember off-hand. Twelve.

Q. What constitutes an operating division, how is it constituted, at least?

A. Well, it is made up, territorially, physically and with regard to the volume of business. For example, what we call the St. Paul division, if one would examine the map, seems to be rather a small division; it starts at St. Paul, takes in all of the Twin City terminals and goes up to Staples and Brainerd, with one branch down to Morris, the Little Falls branch, only a small mileage, but the terminals in themselves represent a large railroad, so that we think that that is all that one superintendent with his subordinates, can reasonably look after and

give proper service to the public and economical administration of the business. Take another division here, called the Yellowstone, it starts at Mandan, just west of the Missouri river, and goes clear out to Billings, Montana. That, in mileage, is far greater than the St. Paul division—441 miles, I think; the St. Paul division has perhaps 250, at the outside. But the Yellowstone division has no large terminals, no congestion upon it, a much lighter business, so that one superintendent can get over that division and can look after the business of the public, look after the movement of our business and the maintenance of the road without being overloaded.

Q. Is it a part of the superintendent's business to expedite trains upon his division?

A. Oh, yes, a very important part. There is great rivalry between the superintendents as to that; they try to see that the business delivered to the Company is handled within the schedule time over their division and delivered to the next division on time so that there will be a fluid movement of business back and forth and no obstruction to the movement of business, and one object of breaking the road up into these so-called operating divisions is to induce a friendly rivalry among ambitious and energetic superintendents to see how efficiently they can serve the public and how economically they can do the business for the owners of the property.

Q. Can operating divisions in a system like the Northern Pacific be so constituted as to begin and end with state lines?

A. I don't believe they could be. I don't think it would be possible—I won't say impossible because everything is possible, but I think it would be very impracticable, very uneconomical, considerable of a burden to the public, to attempt to say that your operating division in every case should be wholly within state lines. To take this Yellowstone division again, as an example, the line between North Dakota and Montana runs about thirty or forty miles east of Glendive, Montana. Now,

from Glendive, Montana, to Dickinson, North Dakota, is a trifle over one hundred miles; from Dickinson, North Dakota, to Mandan, North Dakota, is a trifle over one hundred miles. A heavy freight train cannot go much faster than from six to ten miles an hour, so that an engine-run must be somewhere around one hundred miles or the freight cannot be moved over the road within the sixteen-hour limit which is prescribed by the federal authorities and by many of the states. If we should attempt to stop our operating division at the Montana state line, we would have to create another division point of only sixty miles long, from Dickinson to the state line, and one from that point to the Montana division point, or something like forty miles long. That would make a point of interchange and a point of administration which in itself would check slightly the general flow of business; that would also create a great expense by having more division points than necessary; we would have to pay, under the rules of train service, a hundred miles to the train-man who only traveled sixty, or a hundred miles when he only traveled forty, making a great burden to the Company, which incidentally and in the long run, of course, would come back onto the public. Therefore, in figuring our operating divisions we tried to get them approximately a hundred miles, and since the sixteen-hour law and since the growth of business we have been trying to shorten some of the divisions. We have had some 140 miles; we are trying to get them down simply for the purpose of obtaining this fluid movement and avoiding the payment of extra compensation to train-men because of the sixteen-hour law. Another thing that cuts a very vital figure in figuring an operating division is the subject of grades. It is obvious that if you start an engine from one division point to go to another, you want to get the full efficiency of the engine and not have to change engines on the run, so that we try, as far as we can, to get a uniform grade into an operating division. We can't always do

it. One reason we have got this division between Bismarck and Dickinson and Mandan and Dickinson and Dickinson and Glendive, is that right in there it is all a one per cent grade line, 52.8 feet to the mile, so that when the engine starts out of Mandan with a full load it can take it to the other end, and when it starts out of Glendive with a full load, can take it to the end coming east. Immediately west of Glendive and up to Billings we get into the river valley, and we have one engine-run where the maximum grade is practically sixteen feet to the mile, and five or six points where it is twenty-six feet to the mile, so that the engine that starts at Billings and runs to Glendive, or starts from Glendive and runs to Forsyth, in the Yellowstone division, can take an entirely different train from the engine that runs between Glendive and Dickinson or Dickinson and Mandan; and the same physical conditions have to be taken into consideration at all places on the road. Then the large terminals, on account of the great volume of business that accumulates, have to be considered in forming an operating division or a short link out of it, like this St. Paul division. We have, as I explained, just the one run from St. Paul to Staples. It seems a short division for a superintendent, but he has the Minnesota Transfer and the St. Paul and Minneapolis yards, all of which occupies his time fully, and I do not myself see how, on the Northern Pacific, in the past or even in the present, we could map out these so-called operating divisions so they would be confined exclusively to state lines without very largely increasing the burden upon the Railroad Company in the moving of its business and increasing the expense in making that movement.

Q. And decreasing the efficiency?

A. And decreasing the efficiency in handling the total volume of business over the road.

Q. Now, how in fact are your trains made up for the operation of the Northern Pacific System, the freight trains, for

example?

A. Well, of course, take it at the Twin Cities, we receive a large amount of business from all connecting lines. That goes chiefly into the place called Minnesota Transfer. Then we receive a large volume of business from St. Paul, both cars of merchandise loaded at the warehouses and carloads of articles loaded at various places in the yards. The same thing is true at Minneapolis. Those three classes of freight cars are all herded together over at our Northtown Junction yard in North Minneapolis and there put into a freight train or freight trains and started for Staples and west thereof, and those trains all carry freight of miscellaneous character.

Q. In such a train, what distinction, if any, is made between business destined to Minnesota points, say beyond Staples, and that which is destined to North Dakota, Montana, or beyond points?

A. Well, we have what is called a way-freight train, that would take purely local business, to Little Falls or Morris or Anoka, and that might carry some slow-drag freight going to other places. Then we have a through-freight, that will carry stuff for Staples and beyond, including Fargo and Moorhead and points in the Red river valley, some for Winnipeg. And then we have a group of trains that will take stuff for North Dakota, Montana and west, and at Staples those trains meet trains coming from the Head of the Lakes with merchandise and coal and manufactured articles going west of Staples, and at that point they are all put together again and started on their westward course.

Q. Is there any distinction made, in forming your trains, between cars destined for Moorhead, for instance, or for points in western Minnesota, and cars destined for Fargo?

A. None at all.

Q. They are commingled at will and taken just as they come?

A. Yes, and more than that, they very often would have a car of merchandise for Jamestown on the train that also had a car of merchandise for Moorhead or for Fargo, because at Jamestown we have what is called a transfer point. The Twin Cities would load into a car going to Jamestown a large volume of business destined not only to Jamestown but to points north of Jamestown, the Devil's Lake country, and that goes to Jamestown, is transferred there into cars going north on to branch lines; in order to make good time that car would start right out of here on the same train that would take the merchandise to Detroit or to Moorhead or to Fargo or to Valley City or even to Winnipeg, and those cars would be dropped off at different points as was necessary.

Q. Now, how is it with regard to your passenger business about your trains and the commingling of local and interstate business?

A. Well, we have some passenger trains that you may call purely local trains where I should say the volume of through business would be quite small; we have trains, for example, that run between St. Paul and White Bear, where it would be largely local business, although I have no doubt that if we had any means of getting the record we would be very apt to find on those trains a certain number of people who had come from Wisconsin points or from Iowa points; and we have trains that run between St. Paul and Staples where the great bulk of the business on those trains is purely state business; but the general travel in the country is so large, people going back and forth so much, that our observation is that even on those trains we have more or less business that has come from another state. A man will come up from Winona to go to Detroit, etc.,—there will be some interstate business even on those trains. And then we have our groups of other trains that start from the Twin Cities and the Head of the Lakes, and go long distances, going to Dakota and then into Montana or clear through; and in my

judgment you would find very few passenger trains where there were absolutely no people who had not come from one state and going into Minnesota or who might not be going from Minnesota into some other state. There would be some on this White Bear train—there might be days when there would be absolutely nobody on it but purely state people. Take it from Duluth through to Staples, and there might be days when there was absolutely nobody traveling except people who started in the state and stopped in the state; but in the main, I think most of our trains are carrying local or state people and people that are going longer distances.

Q. Do you make any attempt to discriminate between local and interstate traffic in any passenger train?

A. No.

Q. Do you know of any practical way that you can succeed in any such attempt if you desired?

A. No—I wish I did. We have tried very hard to do something of that sort, because we have had a very heavy business in the last year from St. Paul, we will say out to Montana and west. We have tried very hard to get people who were going to Detroit or to Staples not to get on to that train and to get on to what might be called a local train, but we have not succeeded; we have to take more or less people that are going to such places as the through train stops at—very hard to segregate.

Q. I understand that you have been unable to prevent the commingling of your local and interstate traffic on your passenger trains?

A. We have been unable so far as we have tried. We have only tried it on one or two trains.

Q. But you don't know, when a passenger boards a train, whether he is a local passenger or an interstate?

A. Not always, no. A man gets on with a mileage book and says he is going to North Dakota; after he is on the train he

announces that he wants to get off at Detroit, so we have to take him and let him.

Q. Now, with regard to the commingling of your local and interstate freight business: Do you know of any way that you can economically operate that business on separate trains, a train for each class?

A. No; I think it would be almost an insurmountable problem. It seems to me it would mean separate yards or separate track in yards upon which you would have to place your local freight cars, and other yards or tracks upon which you would have to place cars handling interstate business. That would delay you in switching, increase the already very serious burden at all these large terminals in despatching the business of the public, and in my judgment it is a practically impossible railroad problem to say that you could so handle the shipments in one state that they were always handled together and separate from those that were going between that state and another state; it would mean an enormous increase in the investment in yards, mean more equipment, mean more labor and mean greater delay in distribution of the products of the merchants and manufacturers and farmers of the country.

Q. I call your attention to Complainant's Ex. 2—Darling, which is the estimated cost of reproducing the Northern Pacific Railway System, as of date April 30, 1908. It appears from that statement that the estimate made by Mr. Darling with regard to supplies on hand is $6,377,282. Are you familiar with the amount of material and supplies on hand with your Company as of that date, April 30, 1908?

A. Well, I was familiar with it at that time, and when I was notified I was to be a witness and that that was the date it was taken, I refreshed my memory as to the material amount and the material values of the Company at that time.

Q. How often do you inform yourself with regard to the amount of material and supplies on hand and the value?

A. I inform myself regularly once a month, because it is a very vital part of successful railway management to endeavor to have your material carefully handled and not to carry any more than is necessary for safety and economy and it is one of the great places where leaks can occur if somebody is not after it all the time.

Q. Can you state whether or not that amount contained in Mr. Darling's estimate as of April 30, 1908, is accurate?

A. I think from my knowledge of the way we keep our material accounts and the checks and balances we throw about them, that it is very accurate.

Q. Do you know of what the material and supplies (that means material and supplies in the ordinary language used by the accounting and operating departments) consisted at that time?

A. Yes, in a general way I know.

Q. What is your judgment, based upon your experience as a railroad operating man, as to whether the Company had at that time too much material and supplies on hand, too much for economical and prudent operation and care for the future?

A. My judgment is that we did not have too much, considering the general situation of the Northern Pacific, a long line stretching two thousand miles across the country, with danger of interruption by fire and flood and a long way from the markets where we have to buy certain classes of supplies.

Q. Do you keep yourself familiar, familiarize yourself, from time to time, with the amount of material and supplies kept on hand by other roads similarly situated to the Northern Pacific?

A. Yes, once a year I generally look that up, so as to see whether our Northern Pacific management seems to be reasonable and efficient in taking care of the property without tying up too much money in stock.

Q. When did you last make such an investigation?

A. Well, I looked it up after I got the annual reports of a

number of the large railroads.

Q. This year?

A. This year.

Q. The annual reports as of June 30, 1908?

A. Yes.

Q. What did you find the comparison to be between the amount which the Northern Pacific keeps on hand and the amount which other roads similarly situated kept on hand?

A. Well, as of June 30, 1908, the Northern Pacific had invested in stock, $6,113,000.

Q. You mean material and supplies?

A. Yes, the same thing that you are talking about, material and supplies. The Great Northern, according to their annual report, had invested, at the same date, $8,219,000; the Atchison, Topeka & Santa Fe had invested, $14,639,000; the Canadian Pacific had invested, $11,110,000; the Union Pacific for the year ending June 30, 1907, (this year's report had not been received,) had $9,884,000. Now, I deduce from that that the Northern Pacific certainly was not improvident in the amount that it had invested in material and supplies, that seemed to be lower than other people, and it seemed to me that our management had been careful in not tying up too much—upon which, naturally, we lose the interest on the money.

Recess until 2 P. M.

AFTERNOON SESSION.

The MASTER: Gentlemen, I interviewed Judge Sanborn this noon and explained to him briefly the nature of the proceeding, (at the morning session) and stated that a record of it would be made and placed in his hands tomorrow morning at 10 o'clock. He said he would examine it and hear counsel tomorrow afternoon at 2 o'clock.

Q. What, in your judgment, would it cost at the present time, to acquire the material and supplies, or on the 30th of

April or thereabouts, 1908, to acquire the material and supplies then on hand with your Company?

A. Well, I think it would have required all that we show on our ledger at that date. The last three years we have paid very close attention to the care of our supplies, and our inventory—which is taken once each year and taken very carefully—has shown for three years running, I think, very slight discrepancies. Naturally, in cost or in number and units of material, with six or seven million dollars of material scattered over 6,000 miles of railroad, there would be some variations; but my recollection is that the variations were not material in a sum as large as six or seven million dollars.

Q. What in your judgment is the value of the material and supplies then on hand as compared with the then cost of purchasing it, having regard to the question as to whether or not it has depreciated in quality or character from keeping it on hand?

A. Well, of course, there is a certain amount of dead stock in any railroad with as large a quantity of material as we have but I don't believe that the dead stock is enough to counterbalance the fact that the seasoning of our ties makes the tie worth a good deal more after we have had it a little while than when it is first cut and delivered to us. In that total we had a million and a half dollars worth of ties which we season for awhile and then treat, and they appreciate in value by that seasoning rather than depreciate in value. Our fuel and coal on hand depreciates a little, but the great bulk of it is at the Head of the Lakes and we only pay for it as we take it. Miscellaneous store material I think depreciates very little; rails don't depreciate any, and miscellaneous track-material does not. I think it would be fair to say that the loss in dead stock and from petty thieving, which goes on to a certain extent, is offset by the better value of our tie and bridge material, because it seasons and becomes cured.

Q. Mr. Cooper, in his testimony, as I remember it, said that the Company had 1,500 acres of real estate at the present time which was not in active use for the operation of the Railroad property. Do you know whether or not that is the amount of real estate which you have acquired and which is in that condition?

A. Well, I suppose you mean 1,500 acres not counting the land-grant?

Q. Not counting the land-grant.

A. Well, I think it is a little more than that. I think we have got nearer 1,600 acres than 1,500 in terminal properties at important places which are held for the future expansion of the Company.

Q. Will you say why that land was acquired by the Company?

A. Well, every one who has lived in this western country knows how fast it has grown, and I presume every one who lives here believes it will grow still faster in the next five, ten or fifteen years; and the experience of men in railway management, and my own experience has been, that we very rapidly approach the period when our terminals, especially at the larger places, become the limiting feature as to the volume of business that we can do and as to the amount of service that we can give to the public. I might illustrate it in this way: That if you had an inch-pipe you could run an awful lot of water through it if you were able to feed it in at one end and dispose of it at the other end. Now, we can move an awful lot of business over our railroad if we have always got a place to assemble it at one end and discharge it frequently over the track and take care of it at the other end. So the question of the yard at one end and the yard at the other is of vital importance. We can always put in a double track (that is, almost always) without insurmountable obstacles, but we can't always increase the discharge place at one end and the gathering place at the other

in these great growing cities. Therefore, since I have been with the Company, and prior to my coming here, we have endeavored to look ahead and keep buying property that would enable us, as the business of this northwestern country grew, to increase our terminals so that we could serve the public by having a more constant and a greater flow of business over the single or double-track or triple-track road between the terminals. Now, we have to-day exceedingly good terminals in nearly all of the large cities and in many of the smaller ones. But in spite of that, we haven't felt—I haven't felt as one of the responsible officers of the Company—that we had any too much, considering our duty to the public and our duty to the owners of the property in preparing for the future. So, since I have been here, I think all of these 1,600 acres that Mr. How speaks of have been bought since I have been with the Company, and we are at it all the time. It is a kind of business that we can't go out and announce to the public that we are doing. We have to go and pick it up quietly. It takes three or four years, maybe, to buy property. I know of two cases where we have been three years buying property that we need in order to complete and round out the large area which in time can be used for enlarged terminals.

Q. Does any of this 1,600 acres comprehend property which you have designed for the use of the Railway Company but which has not been wholly acquired as yet?

A. Some of it does, yes.

Q. How far ahead have you looked in your purchase of such property? that is, in how near to the future, have you, when you bought the property or had it bought, intended to employ it for development?

A. Well, in some cases I thought it would be five years before we would utilize it, in others ten or maybe fifteen.

Q. And why have you not felt able to delay your purchase until such time as you might want to use it?

A. Because the growth of the towns was so rapid and the laying out of streets and the building of houses going on at such a rate that unless we bought it and held it it would have been almost impossible to have gotten the land ten years from now. You go into New York on the New York Central road and see what they are doing to get a little bit of a narrow piece of ground, tearing down six-story buildings and paying millions and millions and millions of dollars to get a little bit of ground for half a dozen tracks. Well, out here it seemed to us prudent to try to foresee as well as we could the growth of the country and get ready. My own guess is that in 25 years the people who come after us will think we were pretty short-sighted that we didn't get more.

Q. What have you to say, based upon your experience of the growing railway system of the Burlington, of the Northern Pacific so far as you have had opportunity to observe it with regard to the judiciousness and economy and propriety of these purchases of land which you have purchased and do not yet employ in operation?

A. Well, in answering that question, of course I have to pass somewhat upon my own acts, but I am perfectly sincere in saying I think that in all the cases where I have been interested in acquiring additional property they have been in the direction of protection of the existing property of the Northern Pacific Company and in protection of the duty of the Northern Pacific Company in preparing to handle the commerce of the country. I think, further, in every case that I now recall, if the purchases are found to be unwise for railroad use, with reasonable care and reasonable time we could dispose of them for more than we paid for them. We could not, of course, put them on the market right off and say, "Here, we want you to buy this property," and perhaps get all that we paid, but the growth of the towns and cities where we have bought our property, both here and on the C. B. & Q., has been such that my judgment is

there will be no loss of money, probably a profit.

Q. Will you state, Mr. Elliott, how much equipment, and of what kinds, has been purchased under your immediate direction since you have been with the Northern Pacific Railway Company?

A. Well, since I came here, there has been purchased under my immediate direction, and in fact I passed on every purchase, the type of the equipment, the price, the specifications, and the question of to which equipment company the contract should be let, and I have bought 477 engines and 237 passenger cars, 19,522 freight cars, and quite a large amount of work equipment and shop tools. I didn't enumerate them in numbers.

Q. What is the aggregate amount of the purchases in money?

A. $26,482,167.61.

Q. How recently has any of that equipment been purchased?

A. Well, of that listed there, the last purchases were made last spring; we bought a few passenger-train cars.

Q. Do you feel able to pass an opinion upon the present cost of the acquisition of equipment such as the Northern Pacific now owns and owned on the 30th of April last?

A. Why, yes, I feel that I would know in a general way what I think we would have had to do to get it.

Q. Do you know the amount of equipment owned by the Company at that time?

A. Yes, sir.

Q. What is that amount?

A. 1,344 engines, 928 passenger-train cars, 42,706 freight cars, 5,903 miscellaneous cars. Now, I would like to make a statement, right there, so that there won't be any misunderstanding. Those units were made up as of April 30th, and then I think they were corrected down to August 30th, and I would have to verify as to whether it is April 30th or August 30th for those figures, because I prepared some of this testimony a

long time ago, and I think it may be that there is a slight difference in some of those units as of April 30th, compared with to-day, but I can submit, if it is desired, a statement showing exactly what it was April 30th.

Mr. HOW: I don't suppose that will be considered material, will it, any slight discrepancy of that kind?

Mr. O'BRIEN: I shouldn't think so now. Of course if it does become material—

WITNESS: I merely want to do that to protect myself as a witness because it might prove that this was August 30th or September 30th, this figure.

Mr. O'BRIEN: Yes.

Q. What is the condition of the equipment, Mr. Elliott, owned by the company?

A. Why, I am very glad to say that our equipment is in very good order, never has been in as good order since I have been connected with the Company, and those who have been here longer than I have say it has never been in as good order at any time in the history of the Company. We have been very liberal with our equipment expenditures during the last twenty-four months.

Q. Based upon your experience, what is your judgment with regard to the amount of the equipment owned by the Company, as compared with what it needs for convenient economy and successful operation of its property?

A. Beginning with locomotives, and discussing passenger locomotives first: The growth of our country, particularly in Montana and west, has necessitated running more trains and heavier trains, so much so that we are just buying 13 passenger locomotives, adding to our present passenger power; of course we would not, as prudent managers, be going into the market to buy more if we thought we had enough passenger engines. But we are confronting what we believe is a larger transcontinental travel in the next few years than we have had in the

past, because of the growth of the Pacific coast and the interest that the country east of the Rocky mountains is taking in the country west of the Rocky mountains. I think we will have none too many passenger engines for our business, because we not only are having to put on more heavy through trains, but, as the country grows west of the Missouri river, we find we have to put on little short trains, that are called the filler-in trains. They do not pay in themselves, but as a means of helping to build up the country and as a means of keeping other big trains on time, we are adding them,—a train, for example, that will run from Mandan to Dickinson, and will relieve the train that runs from St. Paul to Billings from local work. That sort of passenger-train business is growing. On the question of freight power, we happen to-day to be a little bit easy. We have perhaps fifty engines more than we need, but, in October, we practically had them all in service at the time the heavy wheat movement was going on. Then our Company for the last two years (and I hope for the next two or three years will be) has been exceedingly busy in the construction of new railroads and the reconstruction of the old road with the effort of giving greater earning power to the existing road and greater economy of operation. All of that work has taken a good many engines for hauling dirt, ballast, and so on; we have some engines in that service and probably will have to have them in for quite a number of years more; and we believe that the growth of the country will, even if we give up this construction work, more than take up any slack that we now have in our freight power. My judgment would be that we haven't any serious excess of freight power. Right to-day, as I say, we have a little surplus power, but in October we didn't have any, and it is as good business policy for the Railroad, as for any other business concern that is trying to get patronage, to be able to give a little more service than is absolutely necessary with the idea of trying to attract trade. Two years ago and a year ago we didn't have

enough power, and probably you gentlemen remember there was a good deal of agitation because the roads in the Northwest, it was claimed, were not serving the public adequately. That was not so much a matter of power at the time as it was of terminal facilities and certain trackage questions.

Q. How about your freight cars and passenger cars and work equipment, and so on—miscellaneous equipment?

A. Well, now, freight cars: the same remark applies to freight cars that I made about freight locomotives. It is better for us to try to be in a position where we can cater to the trade than to always be a little bit behind. I don't know that there is any way of making a comparison about freight cars.

Q. I will ask you that later, if you can make it.

A. All right.

Q. I will ask you now, to compare your equipment with that of other roads situated similarly to yours, and comparing their traffic and density of traffic, also.

A. Well, the Northern Pacific has 7.8 freight cars per mile of road. The Northwestern has 7.5 cars per mile of road. At first blush, you would say we had too much, but the volume of freight business done by the Northern Pacific is more than the volume of freight business done by the Northwestern per mile of track; we have a more dense business. The Milwaukee has 5.9 cars per mile; the Great Northern has 6.3 cars per mile. To put it in another way, measured on the number of million tons of freight moved one mile, (that is, the use you get out of the freight car) the Northwestern has 10.6 freight cars for every million tons of freight moved a mile; the Soo line has 9.6; the Milwaukee has 8.2; the Northern Pacific has 7.7; the Santa Fe 6.8; the Great Northern 6.3; the Burlington 6.3. You see we are less than the Northwestern, Milwaukee or Soo, and a little more than the Santa Fe, Great Northern and Burlington. We have, west of the mountains, a great many branch lines where there is quite a large merchandise business, and it takes us

rather more cars to do that than it takes the Great Northern. The C. B. & Q. have developed an efficiency of movement which has enabled them to do a very large business, apparently, with a slightly less number of cars. I don't think we are over-equipped if business is going to keep up about on its present basis and grow.

Q. Should you think it practicable to dispose of any of your freight equipment?

A. No; I should think that would be a very unwise thing to do. This year we have needed all of our cars up to about, oh, well, this autumn we have needed all of our cars up to about the 1st of November; since then there has been a little slackening of the demand east of the Rocky mountains, but an increase in the demand west of the Rocky mountains. The last month we have been a little short of cars west of the Rocky mountains, but we have hesitated about moving empty cars from this end of the road, 2,000 miles out there, because it is a very expensive thing to haul them over the mountains that distance. Our freight cars, as a whole, are in very good order. We have got a trifle over three per cent of our equipment that is in bad order, which is a pretty good showing. Five per cent is fair, a little high; four per cent or less of your equipment in bad order is a good showing.

Q. How about your passenger-train cars?

A. Well, in answer to that I will say that our passenger-train cars have been well utilized all this season, so much so that we have been making calculations for 1909 and 1910, and are adding to our equipment now. There are parts of the Northern Pacific road where the passenger equipment is not thoroughly well used, that is, the cars, in the through trains, because they run through a thinly settled country, but we cannot keep switching cars in and out of our transcontinental trains. We have had a good deal of complaint this year about the crowded condition of our cars as far as Mandan, North

Dakota, and between Billings and the Pacific coast. Between Billings and Mandan, the thinly settled country, the cars are not so crowded, but on account of the necessity of these filler-in trains and of the great growth west of the Rocky mountains, we are planning to put on more trains and buying more cars, and we have no excess of passenger-train cars for the summer season. In the winter there is an excess, and that is the time when we try to "shop" as many cars as we can, get them all ready and paint and varnish and do any interior work that is needed.

Q. What have you to say with regard to your miscellaneous and work equipment?

A. We haven't any excess, considering the large amount of construction work we are now doing and what we contemplate doing and what we hope to in the near future. We have a good many steam-shovels and snow-plows and things of that sort, but none too many for any crisis, like a severe storm or wash-outs. The work equipment fills a double purpose, of course; it is to do actual work in the ordinary maintenance and repairs of the road, and also as a sort of insurance policy when there is trouble.

Q. I call your attention to Complainant's Ex. No. 2—Darling, in which he has set figures showing the estimated cost of the present purchase of the equipment of the Company as of date April 30, 1908. He puts under the head of Steam Locomotives the sum of $21,642,538. I ask you what is your opinion with regard to the justification for those figures.

A. Well, my estimation on that would indicate that it is barely possible that we could get those locomotives for a trifle less, but not much. I doubt if we could get the locomotives now on the Northern Pacific and *in place* ready for doing business, ready to perform their functions of hauling freight trains and passenger trains, for less than twenty-one million dollars.

Q. Is that twenty-one million dollars in round figures?

A. Yes, in round figures. I don't know that we could do it for that, but I want to be very conservative about it, and I think perhaps we could.

Q. Under the head of passenger-train cars, Mr. Darling's estimate is $7,039,204. I ask you what is your judgment with regard to those figures.

A. Well, I think he is low. I think it would take us seven and a quarter million dollars to get our passenger cars thoroughly well equipped and ready for business and in place on the railroad where they belong.

Q. Under the head of freight-train cars he has $38,108,993. What is your judgment with regard to those figures?

A. I think he is high on that. I think we could get our freight cars for between thirty-two and thirty-three million dollars.

Q. Do you know where he got these figures?

A. I do not.

Q. They are not his own, he testified, as to that, but he took them from the head of some department. With regard to work equipment he has $841,773. What is your judgment with regard to those figures?

A. He is very low on that. Our miscellaneous equipment work, etc., I doubt if we could reproduce for less than two and a half million dollars.

Q. He has floating equipment.

A. Well, maybe, then, there are other items. I had everything in mind, floating and miscellaneous.

Q. Well, his total of floating and miscellaneous equipment is $1,454,173. I ask you what is your judgment in regard to that.

A. I think he is low.

Q. By how much?

A. Well, approximately a million dollars.

Q. Are you familiar with Mr. Darling's testimony on the

subject of contingencies in making an estimate, allowing for contingencies in making an estimate of the cost of construction of railroad property?

A. Well, I went over some of Mr. Darling's testimony and discussed it with more or less people, and I know, in a general way, something about the way he added for contingencies, which I believe was ten per cent, or something of that sort, to the total of his items.

Q. He adds the cost of all other items for the actual construction of the System as it exists, omitting interest charge and such things, and then he multiplies the aggregate by ten per cent for contingencies. How much experience have you had in directing or supervising or being responsible for construction of railway properties?

A. Well, my principal experience in that has been since I came with the Northern Pacific. Of course, my experience on the C. B. & Q. was more in the line of operation, we were not doing very large works there at that time. But since I have been here, we have spent a very large amount of money for heavy construction of new lines and reconstruction of the old lines, and all of those expenditures have been conducted under my direct supervision, and weekly or bi-weekly, there has been discussion as to ways and means and plans, etc., and we have done some very heavy work.

Q. Can you give, approximately, the gross cost of such construction since you have been with the Northern Pacific? I don't ask for it accurately.

A. Well, I would have to tabulate that. I know we have spent, in the last two years, for equipment and construction, seventy-two million dollars. I think for everything it is nearly one hundred million dollars since I have been here. I would have to check that up to get it accurately. I know what it is the last two years; it is approximately seventy-two million dollars.

Q. What has been your custom with your engineer, before entering upon such construction, with regard to getting a view as to its probable cost?

A. Well, we have the engineer, of course, make as careful and thorough a survey of what we wish to have done as he can within a reasonable time and make estimates of what he thinks it would cost to do what we want, and we have assumed that this ten per cent item was enough to cover the unforeseen difficulties, but we have been disappointed; and disappointed not because of any failure in technical knowledge of our engineer or engineers. Possibly we have failed because the pressure on the Railway Company to provide new facilities and amplify the old ones was so great that we didn't make as prolonged an examination as might have been made, but the necessity of doing work is so urgent that we don't want to spend two or three years in making an examination of a given piece of work before we start at it. If we should do that, it would delay the general completion of our whole scheme of railroads, the public would not be served; so we have made a pretty thorough examination and then have made our estimates. But the five years that I have been here have shown that there are unforeseen difficulties that have come up, some of which could have been guarded against if we had taken a year or two more in making the examinations of the country. And another thing that has entered very largely into the increased cost is that the general scale of wages has been going up very rapidly in the last five years, in what is called common labor on construction work, and, until within a few months, the efficiency of the labor unit has gone down.

Q. What is your opinion, based upon your experience, with regard to the amount of Mr. Darling's estimate for contingencies?

A. Well, it is too low. The experience I have had in some of these large works has shown that in nearly every case the

estimates that were based on the previous experience that the engineers had and that I had had,—the estimates were too low, by all the way from twenty to sixty or seventy per cent.

Q. Will you give some examples illustrating that, in Northern Pacific construction?

A. Well, for instance, I have just rebuilt the large bridge at Duluth, the St. Louis bay bridge. We estimated that it would cost $485,920. Up to the time this statement was made up, a month or two ago, it had cost $620,000, and wasn't done then. We have a very heavy piece of work here in Minnesota called the revision of the grade and double-track work between Lake Park and Glyndon. We made a careful estimate of that, and it was thought we could do the work for $2,140,000. Up to a couple of months ago we had spent $2,898,000, and it looks as if we would have to put in three or four hundred thousand dollars more in order to get it done, making the work cost very nearly fifty per cent more than the estimate. That was due to a very peculiar condition—

Q. I was just going to ask you to state that.

A. —that the railroad met. We put a heavy fill on the prairie in order to get a low grade line over the Red River valley east, and it turned out that the Buffalo river, which wanders through that country, had had an old bed and zigzagged around there and finally the river had gone away but that bed was filled with a soft, rather viscous blue clay. When we put a high dump on it the dump was broken right through the prairie and has sunk in places thirty feet. We had it pretty nearly done, and it began to go down out of sight. Well, you might say we ought to have foreseen that and bored holes in the ground and found out all about it; hind-sight is better than foresight, and if we were going to do it over again, we would, but we were very anxious to get that work done and pushed through ready for the growing wheat business of the western country, so we went at it, and it didn't occur to anybody that the Red River valley

was a quick-sand, but there was a case where I think it will cost us about a million dollars on account of that particular disability. Another serious case that we had was in work between Missoula and Garrison, Montana. That is a throat over which nearly all of our business that moves between points east of the Rocky mountains and points west of Missoula must go—a very, very large volume of business, at times as dense a movement of business there as there is on the main line of the Lake Shore road. They have a single-track road with a great many curves and some hump grades. We planned to straighten out that line, double-track it, put a flat grade in of not to exceed 22 feet to the mile going east, and the estimated cost of that was three and a half-million dollars for seventy miles of road, $50,000 a mile. Last May that work was pretty nearly coming to a head. The big part of it was done, getting ready to do the little things, put the ties on, and the rail, and dress it up. Rains came in Montana, which they say out there were the heaviest they have any official record of, and the old inhabitants say it was the heaviest they ever heard of for twenty-eight years. It came very suddenly at the end of May; there was some snow in the mountains, and those mountain-slopes are very steep, and all this water came down at once into the Hell Gate river and damaged our work, so that we have had to go to work and do a great deal of it over again. Instead of costing us three and a half million dollars, as nearly as we can figure it it will cost over five million dollars, or over $70,000 a mile, for revising and fixing a single track and putting in a parallel double-track. There is a difference of pretty nearly fifty per cent, due to this very unusual fall of water. No one knew anything about it or expected there would ever be such a fall of water. The St. Paul road had just the same trouble, showing that their engineers were just as much at a loss in making a calculation about a condition of that kind as ours were. Our total damage out there was approximately a million dollars, physical dam-

age. Then we found another case. In the Rocky mountains, where we are building a low-grade altitude line, so as to avoid lifting our freight 25 feet up in the air, we are building 22 miles of single-track railroad; the estimate was $70,000 a mile; it was pretty high for just single-track railroad, but it is going to cost us, for that twenty-two miles very nearly $100,000 a mile; the reason being that we had to cross the Missoula river quite a number of times, and we found that we could not put in our bridges on the class of foundation that we had estimated on because, after we had got down a little bit below the loose sand in the river, we got into a whole lot of moving boulders and we had to spend a great deal of money to get a stable foundation for those bridges. That, together with the inefficiency of labor and the higher prices that came, due to excessive demand for labor, sprung the price so that those 22 miles of railroad in there are going to cost us probably nearly $100,000 a mile.

Q. What caused this excessive demand for labor during this work?

A. Well, our Company was doing a very large amount of work from the crest of the Rocky mountains to the Pacific coast, and the Milwaukee was doing a great deal of work, some of the electric lines were doing a great deal of work, the mines were all pretty active, lumber camps were all pretty active, and, as a result, what is known as common labor was in very active demand. It was common talk among the contractors who were building our works that they changed their forces at least three times a month, there were men came and stayed perhaps a week or ten days and then they went on and they hired somebody else, and it all added greatly to the expense of doing this work. Well, those are contingencies that come in with us, and with others—we are not alone in it. But if I was making calculations now of this same work, I would add a good deal more than ten per cent to take care of that class of things—scarcity of labor, inefficiency of labor, higher price because of sharp de-

mand, weather conditions that are unusual, and physical conditions under the ground that could be found out if we took a great deal of time for making our examination, but which we didn't examine because we wanted to get this thing done; we were under great pressure to supply the public with transportation.

Q. Well, if those things should be found out by taking more time for examination, of course the estimate, apart from the contingencies, would be raised?

A. Oh, yes. Here is another case that was a very striking case, too. We are building a railroad up from Lewiston, Idaho, on the Snake River valley to the top of what is known as Camas prairie, a perfectly beautiful place, where eventually there will be ten million bushels of wheat produced a year, and it is 2,500 feet above the Snake river. We had to climb up the side of the mountain to get up on this beautiful plateau, some fifty-five miles of railroad that we thought we could build for $35,000 a mile. We got in there and we found that the surface of the ground didn't give a correct idea of what was in the ground; instead of it being earth work, it was a very, very large amount of rock, so that instead of costing $35,000 a mile, it is going to cost us over $60,000. Now, we might say that could have been found out if we had gone and drilled holes in the ground, but it was reasonable to assume that this beautiful wheat country wouldn't run up rock in so many places. And we had very bad weather, that came in and that soil is a difficult soil to handle in bad weather, it is a waxy, muddy soil, and that increased the expense. There are several cases where the cost has been anywhere from forty to sixty per cent more than our estimates.

Q. Mr. Elliott, if the Northern Pacific railroad System should be presently constructed and turned over to the operating department to-day, I take it that it would be necessary to have some money in the bank to enable the operating department to run the road and take care of its business; am I right?

A. Why, if you were going to turn it over to me, I would like to have some; it would be kind of hard work to start out with as big a machine as ours and not have a pretty substantial sum in the bank.

Q. Have you considered how much working capital a system like the Northern Pacific, with its business, ought to have, reasonably, in order that it may operate its property economically and with good advantage?

A. Yes, I have thought about it somewhat.

Q. What is your judgment with regard to that?

A. I think it is not too much to say that the Northern Pacific, considering all of its obligations and its necessities of acting promptly in certain cases, should have fifteen million dollars in bank at its immediate call.

Q. And for what purposes would that fifteen million dollars be necessary or apt to be necessary?

A. Our monthly pay-roll will run from a million and a half to two million and a half dollars. Very few months, however, will we be as low as a million and a half; some of the short winter months, where everything is cut to the bone, we may get down as low as that. Now, our current vouchers that come along from day to day will sometimes be as high as two and a half million dollars a month. On the 1st day of August, November, February and May, the Company must meet its big payments of interest and dividends, which will, beginning the 1st of February, amount to five million dollars, for those four months.

Q. Each payment?

A. Each payment. Then in the intermediate months of July, October, January and April, we have other payments which are $1,100,000 each month. For all those payments we must deposit the money with some fiscal agent a little ahead of the time when the money must be paid out. Then we have very heavy taxes (and I am sorry to say they are going up very fast) that we have to meet promptly if we want to save penal-

TORN PAGE

ties, or, at times, perhaps, get the benefit of some discounts. Well, there is a class of payments that we must be ready at all times to meet promptly. Now, it is obvious to any one that your business machine as a whole would be better off if your employes always know that pay-day is regular and that there is never any doubt about their pay. We must take care of that. Now, the interest and dividends, of course, you *must* pay promptly; your payment for materials and supplies, if you pay promptly, has quite a marked effect on your ability to purchase satisfactorily. A man will say, "Well, we will sell to the Northern Pacific, because they always pay on the spot and we don't have to wait." Then at other times we are doing heavy construction work which takes very large sums of money and the money is spent long before we begin to get any benefit from it in the way of business, because we take a year, say, or even two years, to build a given piece of work, a given road, the money is in there before we get trains running over it and any return from it, so we have to look ahead on that. Another thing, that we did last year (some people thought, perhaps it wasn't right, I thought it was a good thing to do); a year ago there was, as you all know, a little difficulty about moving the grain; we came to a dead-lock, the bank didn't have money, didn't have credit, everything was tied up, and this grain out in Dakota was standing; we joined with some of the banks here, and we put in quite a large sum of money to enable that money to be loaned to start that grain moving. Why did we do it? We simply did it because if that grain flowed in here, then the merchandise flowed back, the commerce of the country went on and we did business, and the country merchant did business, and the St. Paul and Minneapolis jobber did business, and coal was moved from Duluth. It may be if we had done nothing at all that somebody else would have stepped forward and put up the money, but nobody seemed to be around ready to do it, so we had a million or so dollars on hand which we could use and we put it into

that business and it helped to start the machine going along. I think it was a wise thing to do. We were getting ready to do it also on the Pacific coast. A lot of gold was sent to the Pacific coast from Europe that eased up the pressure out there. Well, by the advantage you take of these different things—your payroll, your vouchers, your necessity for buying things perhaps ahead of time because you can make money by so doing, your construction, your absolute necessity of paying all of your interest and dividends promptly—all those things, it seems to me, justify having a substantial cash balance on hand, if you are fortunate enough to be able to have it, and I don't think fifteen million dollars is excessive for an institution as big as the Northern Pacific. Another item that is of great importance, of course, in the long run, is the general credit of the Company. If for any reason the Northern Pacific should have to slip a dividend because of floods such as we had in Montana, doing even greater damage than it did, or because of some fire that crippled us, or because of an earthquake in the mountains—they claimed the other day out on the Pacific coast that one of the big mountains there was beginning to send up smoke again, some geologist thinks some day there will be a slip in the Cascade mountains, I don't,—but suppose we should have a great interruption to our business, from labor or physical difficulties or fire or flood, if we had enough to tide us along for four or five months, why it would save our credit and enable us to show to the public that we had been prudently managed and had enough to meet such an adverse condition. And, as you all know, a great many of the financial institutions are limited by state laws on the class of securities that we can buy by a condition that there must be a continuous payment of a dividend for some term of years before the bonds of such a railroad become investments under the law for fiscal institutions, in some of the eastern states. Well, if we can always keep our bonds a savings-bank bond, that helps us very materially.

Q. That helps your credit?

A. Very much.

Q. In your construction that you talk about, it is necessary to have a working capital, for you capitalize that construction, do you not, and issue bonds against it?

A. Yes; we have the right, under the Northern Pacific mortgage, to issue a million and a half bonds a year, and that right lasts I think only three more years. Then all the bonds provided for by our mortgages are used up except an issue of our three per cent bonds, which is to be used in about 100 years from now, when the present four per cent bonds become due; but we have after three or four years, no more ability to get money from the present issues of bonds, we would have to have a collateral trust bond or a debenture bond, or something of that sort.

Q. What is the fact with regard to the time when you could capitalize construction?

A. I don't think I quite understand.

Q. Are you compelled to construct before you can capitalize?

A. Oh, yes; sometimes we are; of course, it so happens now with the Northern Pacific that we asked our stockholders and they responded and gave us a considerable sum of money for construction purposes, some of which has been used and the balance of which will be used if we carry out our plans for the next two or three years; but until we secured that money from our stockholders we had to spend money on the railroad long ahead of the time that we could get any new money from the owners of the property—did spend a great deal.

Q. What, in your judgment and experience, in a railroad operating property, depreciates with use or with age, and what, in your judgment, if anything, appreciates in value?

A. I suppose that you are talking about the physical part of the road?

Q. The physical part of the property.

A. In our country it is fair to say, growing as it is, with a population flowing in as it is, that in the main all of your lands, your right-of-way and your terminals, appreciate. There may be a few places where lands and right-of-way depreciate because mining camps fail and the whole community disappears; but in the main, all of your real estate appreciates pretty steadily. The embankments of a railroad, in my judgment, appreciate as time goes on, because they become better settled and they become better protected from damage from the weather. One of the great difficulties with any railroad is the study of the action of the water, not only of the water in the streams, but the general action of the water when rain falls all over the country; and that is something that we have to be at work at all the time, to adjust the small and the large openings in our embankments to take care of the flow of water. It changes more or less and as we get older and older we finally get it worked out so that the lateral wash on our embankments is reduced to a minimum; we put in more small openings, or we put in rip-rap and protect ourselves. The older your road gets the more permanent it becomes as to features of that kind. You take a new railroad, it naturally doesn't know about those things, so it puts in what are called wooden box-culverts, we will say, to take care of the drainage of a small stream, a small water-course. After it has been there for four or five years it finds what the aggregate of the flow is, and it is safe in putting in a concrete structure, a permanent one. On a road like the Northern Pacific, we have spent a great deal of money putting in that sort of thing, making it safer for the embankment above the culvert because it is a concrete box or a steel eye-beam instead of a wooden box or a wooden bridge. Then this question of rip-rap to protect the side-wash, we only learned that by studying the country, and you can't cure it permanently but you find out every year more and more, and your embankment

gets more solid and more protected and less liable to be damaged by the rainfalls that come. You take the big cuts, the same thing might be said about those; if you get those sloped properly and protected against snow, have drainage at the foot of the cut, drainage at the top of the cut, very often, to keep the water off, then, as your railroad gets older and more settled you get more and more ballast in, it is ballasted and reballasted, gets more settled and more smooth, and you diminish the chances of derailment and of the interruption which such derailment causes. You can't measure what the cost to you is if you have a freight train derailed, and it ties up all your business for ten hours, but you know it is something. If you can avoid it, it is a good thing. With a road like the Northern Pacific, the tying up of our road for twenty-four hours means a very large expense. With any big road it would. The depreciation of the metal structure is a very doubtful thing. The Northern Pacific built a bridge over the Missouri river in 1883 (that is now twenty-five years ago); we took that bridge down in 1904. We didn't take it down because the metal was poor, but simply because of the weight of the locomotives we wanted to use in order to haul bigger trains, the weight of those locomotives was too great for that bridge. We took that metal within that bridge, we took it out to the Columbia river, shortened up the length of the span, reinforced the floor system in the lower cord, and it is a part of our main line bridge over the Columbia river, and, so far as we know, it will last another twenty-five or fifty years, there is no apparent depreciation of the metal. It simply wasn't figured right for the heavier locomotives that we were using and the length of span then over the Missouri river, but by shortening it up, putting in a stronger floor system, why it is good for an indefinite period. You take these concrete structures, that are so much used by railroads now, (reinforced concrete) why, no one can say that there is any depreciation in those. Nobody knows how long they will

last. Now, the ties and the rails and the ballast on a railroad, of course, wear out, but in a well organized railroad the wear of your ties, rails and ballast is taken care of each year by the renewals of those items.

Q. As an operating expense?

A. That is charged to operating expenses. There is a class of buildings, of course, that do depreciate; take wooden structures, water-tanks, etc. You might say that the new material in a wooden building twenty years old is not worth as much as it was when it was new. It is true you could not tear it down and sell it to somebody and get your money back, but, as a tool of commerce, it is just as good for us as it was when it was first put up, because it has been painted and repaired and patched up and kept in order. In the Yakima valley we have just the same station structures at some of our stations that we had when the road was put through there in 1886. The only trouble we have is that they are too small, we have got to throw some of them away because they are too small. They have not depreciated, as a tool for doing business, at all, in good order, they have been kept up. The same thing is true in the Yellowstone valley, we have the same structures there that we had twenty years ago. A good many here in Minnesota. Naturally, as we find the towns grow and we need a better structure, we in common with citizens generally are apt to put up a better type or put up a stone or brick structure, very often, where ten years ago we put up a wooden one, but the depreciation of those wooden structures is taken care of in the same way it is on ties and rail and ballast, by constant repairs and renewals, that go on every day and every week and every month, kept in good order. Take a wooden bridge; we very rarely renew a wooden bridge now. We put in a concrete structure or steel eye-beam, or a concrete arch, or we put in a steel girder or truss. In that case, we charge to operating expenses the entire cost of rebuilding a structure of the kind that is replaced, and the excess we

TORN PAGE

charge to our capital or income account, so we take up in our operating expenses the cost of reproducing the structure in kind which takes care of all of the possible depreciation and is put into the expenses of the road. Now, on equipment, it is very hard to say what is the depreciation of a modern piece of equipment. It is something, of course. But we aim (and I don't think we differ from others) to keep up our repairs, and all of our equipment, as vehicles of commerce, are just exactly as good for our purposes to-day as they were when we bought them, and some of them are better. Take a locomotive with us, we generally have to take a year to get it in just the condition we want after it comes from the locomotive builders. It has, so to speak, got to get seasoned; it has got to get used to the water, it has got to get used to the coal, and we think they are better after we have had them a year or two than when we bought them, and we aim to renew them as frequently as is necessary to put in new fire-boxes, new flues, and do all that is needed to keep them in good order, and the reason locomotives are discarded is more because of obsolescence of type rather than depreciation of quality. We have locomotives on the road to-day that are over twenty years old that are perfectly good locomotives and are pulling trains, but they are too small. The C. B. & Q. had locomotives that were thirty years old that were perfectly good locomotives, but they were too small, and they are thrown away not because they have depreciated in quality but simply because the demands of commerce are so great that we buy a big one and use it instead of a little one.

Q. Take it all in all, what is the value of the physical property, apart from its earning capacity—I mean having reference merely to its condition—of the Northern Pacific System as compared to a new system presently constructed and equipped as the Northern Pacific is now equipped and now handed over to the operating department? That is to say, I want to set off so much of depreciation against appreciation, or the contrary, as

in your judgment is proper.

A. The physical value, you say?

Q. The physical value, purely.

A. I should say that the physical value was a good deal more to-day than it would be if it was just constructed and turned over to us; or, to take an illustration, the physical value of the St. Paul road, now being built from the Missouri river to Puget Sound, in ten years from now will, in my judgment, be a great deal greater than it is the day it is finished.

Q. You do not think the physical value of a newly constructed system would compare with the value of the Northern Pacific which runs parallel to it?

A. Nowhere near.

Q. And this is on account of age and these things that you have explained in regard to the Northern Pacific?

A. It has got seasoned, and we have found out a whole lot of things that we can only learn by time and experience.

Q. The testimony of Mr. Darling with regard to the present cost of construction of the Northern Pacific System proceeds upon the basis of ten years being necessary for that construction and equipment. Have you had any experience in underwriting bonds and in causing bonds to be issued for construction, or in raising money in other ways?

A. Why, I have had no experience in raising money for the Northern Pacific other than this recent issue of stock, but I have had some general interest in one or two underwriting syndicates for bonds that were issued for other railroads in Colorado and Texas and Missouri and places like that.

Q. Have you made it a part of your business to keep track, by way of general information, of the efforts of others to raise money on bonds?

A. Well, I have known in a general way something about that.

Q. In case the Northern Pacific System should be con-

structed and equipped presently, and ten years should be taken for that purpose, what, in your judgment, based upon your knowledge, information and experience, ought reasonably to be expected to be realized out of its bonds, issued say at five per cent, semi-annual interest?

A. Well, it would be a very big undertaking to start out to build the Northern Pacific road, and people would look with some hesitation about the ability of the promoters to put it through. I should say they would be very lucky indeed if they could get ninety for their bonds clean. I doubt if they could do that.

Q. What proportion of the cost of the road, in your judgment, would it be necessary to raise on bonds?

A. Well, from seventy to eighty per cent, I should think, at least.

Q. Even if the rest could be raised on stock?

A. Yes. I would hate to undertake the job of trying to finance as big a railroad as the Northern Pacific.

Q. In Mr. Darling's Ex. No. 2, he allowed ten per cent interest; that is, two and one-half years at four per cent, on the amount which he estimated it would cost presently to construct and equip the Northern Pacific System, apart from its proprietary companies, its lines in Manitoba, etc., and so on. There was something said in cross-examination, based upon the theory that against that interest on the money used during construction, there ought to be set off earnings from operation of the System or a part of the System during construction. What in your experience, based on your experience, is your opinion with regard to the amount of income which might reasonably be expected from the operation of part of the System before the entire System was completed and equipped?

A. I think that you should allow no credit for that. Anyone who builds a new railroad will tell you that you are under great pressure to serve the public as early as you can, and you

miles of branches, in the state of Wisconsin, and we make connection at Ashland and at Superior with all connecting carriers, and we furnish facilities for any and all kinds of business that the people of the state of Wisconsin may desire to do in connection with the railroad. When we come to Minnesota, the facilities of our Company at the Head of the Lakes cannot be equaled. We have nearly 200 miles of railroad in Duluth and Superior. We reach nearly all of the large elevators and industries, and we provide trackage for many industries and have space for others as that district grows. We have two bridges over the St. Louis river; one we have just rebuilt making it a double-tracked bridge for nearly the whole distance; the other is a little bridge which we are planning to rebuild; and in that way we will have facilities for getting in and out of Duluth which will safeguard us against interruption of traffic by boat movement, which is necessarily very large. Now, in addition to our own property at the Head of the Lakes, we own a third interest in the Lake Superior Terminal & Transfer Company, a switching road in Superior. These facilities help us to get access to a great many other water-front locations and put us in an exceptionally strong position to do a share of the existing business to, from and through the Head of the Lakes and the business that in reason is bound to come as the country grows. In fact, our strategic location in the Twin Cities and the Head of the Lakes could not be duplicated today, no matter what you spent, because the property isn't there. When we come down to the Twin Cities, we have very large and complete terminals in St. Paul, which are equal to if not better than those of any other railway company at this point. In Minneapolis, we are not as well fixed as some of the other companies.

Q. How about the other companies in St. Paul? Can they not equal your terminals by the acquisition of more land?

A. I think they cannot, right down in the business center, very well. A new company coming in here would have a great

deal of difficulty in getting a location for the inner city business equal to that of the Northern Pacific. They would have to be farther out of town. In Minneapolis, we have quite large terminals, but, as I say, they are not quite as good as the terminals of some other companies, but we have a great deal of property, some in Minneapolis and some in East Minneapolis, which is in this 1,600 acres that we speak of, which gives us a chance for future growth and development. We have an interest in the Minnesota Transfer Railway Company, which, as you all know, is the point of exchange for a great deal of through business with all of the carriers that reach St. Paul and Minneapolis. Then we have an interest in the St. Paul Union depot, and take it all in all, our facilities at the two Twin Cities and between the two are very, very fine, and I doubt if they could be reproduced, in actual area and kind, regardless of cost. Now, in almost all these big terminals we are enabled to make close connections with all of the connecting carriers, thus facilitating the exchange of business between the territory served by our railroad and the territory served by other railroads. In the state of Minnesota, we have 746.72 miles of main line, and 407.60 miles of branches, that occupy some of the best parts of the state of Minnesota, and our property is well maintained and gives reasonable service to the people in the state. Our local business in Minnesota has not been very good, I am sorry to say, for a number of years, but we are in a position in this state with our grades, our terminals, our passing tracks and all of our local facilities, to do a large volume of business if the state produces it and turns it over to us for transportation. We tap a grain country, a stock country, a grass country and go into the lumber country; we have a line to the Canadian boundary, connecting there with the Canadian roads, and we are in a position to do a share of the growing business between the United States and that portion of Canada which is served by Winnipeg. When we come to North Dakota, we come to a prairie state, where

we have 377.54 miles of main line, and 786.01 miles of branches. Our main line running west from Fargo has branches connecting at various points, and we have others in contemplation if we feel safe as to the reasonable stability of rates, and we are in a position in North Dakota to receive a very large share of the business of that state with the fingers that we have out through it now and the fingers that we contemplate putting in, to serve the agricultural districts which are not now developed as well as they would be if additional mileage was put in, and that development brings grain to the Head of the Lakes and to the Twin Cities, and enables us to share very largely in the movement of merchandise and manufactured articles and fuel going back.

Q. What access have you to the large cities of North Dakota?

A. Well, we have the very best of facilities in places like Fargo, Jamestown, Valley City, Bismarck, Mandan, Carrington. We have quite ample facilities in all of the local towns adjacent to our lines, and we have some of the best of the towns on our lines. We have unusually strong local standing in the growing towns of Minnesota and North Dakota, both, because we happened to be at many of them first, and because we happened to have ample right-of-way, and I think that is an important adjunct to our property—that you can't measure it actually in money; but the fact that the business has grown up around our railroad at Valley City and around our railroad at Jamestown and around our railroad at Fargo and around us at Little Falls, all means that we have an earning power that is very great, due to that fact alone, leaving out the question of the physical ability of the railroad out in the country. When we come to Montana, we have a great state which has only just begun to grow. In the last three years Montana has shown a very marked growth. They are getting away from depending entirely upon mining and going in much more largely for agri-

culture in the valleys, both under irrigation and what is known as dry-land farming. And the wool, the beet-sugar, the wheat, barley, grasses, are all bringing a good deal of money and considerable population into Montana, and in time I think the agricultural part of the state will produce more wealth than the mining part does. We are very well situated there with our base line across Montana in the Yellowstone valley, over the mountains; and then in the drainage of the Columbia river, to the west end of the state with that base line we can extend branches into all of the valleys that we are not now in and have a complete system that protects our main line and gives us a share of the growing business of that state if population develops, as I believe it will, and takes up the land that can be cultivated, both with and without irrigation. Now, it is well known that a valley line is very apt to attract, in the long run, the maximum population. People like to live in a river valley. Take the Danube, the Nile, the Mohawk Valley, in New York, the Ohio and Mississippi valleys, in the Middle West, they all become great centers of population. So with the Yellowstone valley, it is growing very fast. It can never be like the Ohio valley, but it will attract a big population in the state of Montana. And we are right in the Yellowstone valley, all the way nearly, until the point it leaves the state to flow into the Missouri river. Then on account of our being the old line, we have almost all the important cities in Montana on our railroad. We have Glendive, Miles City, Billings, Livingston, Butte, Helena, Missoula, Bozeman, all good growing towns. We have here a branch that is of great importance to us known as our Rocky Fork and Bridger branches, 64.09 miles in length, which leaves the main line west of Billings. They go into two good agricultural valleys, and go into large coalfields, insuring, for a great many years, a permanent source of coal supply, for our own use and for heat and power for the population of the state. At Livingston, we have a branch that

goes down to the famous Yellowstone Park, and we get from that not only the travel to and from the park, but on that line there are coal-mines and coke-ovens. Now, from Livingston west to Helena, we go through the famous Gallatin valley, which is one of the best valleys anywhere in this western country and where this beautiful city of Bozeman is situated, where they have the state agricultural college. That, in itself, is an attraction and a business getter. There are over 400 students at the Bozeman college, that go back and forth to their homes once or twice a year, and it centers a population there and attracts general trade to our Company. At Butte, we have very large terminals going all over the Butte mountain, and they could not be duplicated by any possibility, and the copper production at Butte does not seem to show any signs of failing. Two or three years ago, there was some talk that Butte would have to shut up shop, but the recent discoveries of copper ore at lower levels seem to insure a long life for the Butte community. At Helena, again we have most excellent facilities, and as that is the capital city it is going to be a good residence city in the state of Montana. People who have made a competency are drifting down there and making that their home. The Northern Pacific is well situated there and is in a position to gain a fair, and even a large, share of any business that is created at that point. Now, when we get out here a little farther, we get to a place called Logan, where we have some branches that lead down to a very nice little valley 46.81 miles in one valley and 27.65 miles in another valley. From either of those lines we can build over into a beautiful valley known as the Madison valley, where in time there will be a large population and possibly almost as productive a valley as the Gallatin valley. West from Helena and Butte, to Missoula, we in common with the St. Paul road, run through a section that is not very productive. It crosses through what is known as the Hell Gate valley, (a narrow

valley which is used as our main highway between the East and the West but which in itself does not produce tonnage except to a limited extent,) and that is the place where we have been spending this large amount of money to make a very perfect physical machine in the shape of a double-track low-grade railroad. Feeding off of that piece of track we have a small branch known as the Phillipsburg branch, which is 25.94 miles long, running to the old Granite mountain mining region, and that branch today is not a productive branch. At Missoula, however, we come to a very important town in general situation, and here we have very, very fine terminals, which cannot be duplicated, and at this point what is known as the Bitter Root branch comes in, 63.82 miles long, which penetrates a beautiful valley where there is already a large amount of irrigation and where there is now something like two million dollars being spent in a new irrigation scheme, which will bring its promoters nearly a million acres more under water. I think maybe they overestimate it, but it will bring a very large amount under water. That valley produces, today, lumber and grain and some of the best fruit in the country and hay and live-stock, and it is growing very fast. We also have a branch at Missoula, from the Cœur d'Alene mining region, 109.53 miles in length, which is one of our good Montana branches because of the activity in the Cœur d'Alene mines. There is a great deal going on there, and that seems to be growing. We have, in addition to that, on that road, lumber and some agriculture. At Missoula, again, we have a state university, which in itself is a good asset to have on the line of your railway. It means a population and a good kind of population, a good type of people, making good living conditions which help to attract others to the town. Now, in Montana, it is fair to point out that of this great mileage there is some that to-day is not very productive. That mileage, however, is insignificant. I figured it over very carefully, and we have this little Phillipsburg branch into the min-

ing region, and one we call the Remini branch, near Helena, on the Elkhorn branch, between Helena and Butte, and the Marysville branch, near Helena, that to-day are not productive pieces of property and they have to be carried by the main System, but their mileage is 83.78 out of 1,368.73. Now, in time, if a mine should spring up and be developed on that 83.78 miles, those branches would become productive. But our mileage in Montana, with the growing agriculture and the growing movement of business between the East and the West, is in good location, good condition, well equipped, and we are in a position to do a great share of all the business that moves back and forth, and with that line as a base line we can put out branches in any direction to take a part of any development that may come to that state. In Idaho, we have only 83.34 miles of main line and 181.57 miles of branches. Our main line in western Montana and Idaho is in the Clarke's Fork valley of the Columbia river. That is to say, our main line starts at the summit of the Rocky mountains, and we are in the water-course all the way to Pasco, except one or two places where we have a small hump; and all of that territory in Idaho produces lumber and some mineral, and gradually agriculture, as the Indian reservations are opened. The Flathead Indian reservation, which we serve and no other Company does, is a very beautiful area and it will soon be opened to settlement and will be a large freight-producer inside of five years. Of the branch line mileage in Idaho it is all very productive. We go into what is called the famous Palouse wheat-growing district, south of Spokane, to the Lewiston-Clarkestown fruit country, up on to this Camas prairie, which will produce a very large amount of wheat in due time, up the Clearwater valley, where we get wheat and lumber, and into the beginning of what looks like a great mineral region. A great development is going on there now in all the mining machinery, and miners go in that way. Here, again, on account of being the old road, the

very best towns in northern Idaho are on our line and we are fortunate enough to have the state university at Moscow on our rails. In Washington we have a very large mileage and it is perhaps the most important state that the Company has. We have 785.35 miles of main line and 1,085.82 miles of branches, making a total of 1,871.17 miles of the Northern Pacific, and we have a half-ownership in this new railroad from Spokane to Portland which is now being constructed. Our mileage in Washington covers the best wheat, fruit and lumber producing territory in the state. All cities of any importance in the state are on our rails. We have Spokane, the great capital of what they call "the Inland Empire" and we have there unequaled terminal facilities that, if you had the money you could not get the ground now, hardly, it would be very difficult to get. Pullman is a very nice town south of Spokane, where the state agricultural college is. Ritzville, southwest from Spokane, is the largest wheat-shipping station in the Northwest. Walla Walla is the center of a wonderful wheat and fruit country, in southwestern Washington, a very growing, prosperous town, and they have a fine college there, making the conditions in that country very good. North Yakima is in the center of the famous Yakima valley fruit region, where there is a large amount of irrigation and more coming. Ellensburg is a great grain and hay center, with the state normal school located there; Tacoma and Seattle we have on our rails. Everett and Bellingham, both of those towns are now nearly as large as Seattle was twenty years ago. Olympia, the state capital, is on our road. We have Grays Harbor, South Bend, Centralia, Chehalis, Vancouver, Fort Townsend and other smaller growing communities; showing that by the way our railroad lies in the state of Washington we are in shape to participate in whatever business there is to be done. West from Spokane we have a branch that goes into the Big Bend country of the Columbia river, where there is a very large wheat production, a very pros-

perous community, because they have been getting good prices for their wheat and a good merchandise business going in there. Our old main line from Spokane down to Pasco goes through a country where large amounts of wheat are grown. This town of Ritzville is the most important town there. And from Pasco southwesterly we go towards the Blue mountains into this Walla Walla country, where we handle from six to ten million bushels of wheat a year, and there is an increasing quantity of fruit-growing in that country. The irrigation is growing and the orchards are coming into bearing. From Pasco to the base of the Cascade mountains, we go right up the famous Yakima valley, and we have a little branch in there to serve the irrigated districts so as to shorten the wagon-haul. We also have coal mines. We have wheat, hay, lumber and wool, all in that valley. Now, one very strong element of strength to the Northern Pacific in the Yakima valley, something that you could not buy with money for a new road, is that the orchards, many of them, are now just coming into bearing, and in the next five years the volume of business that we shall have in the Yakima valley due to the fact that these orchards are coming into bearing will be very much increased, and that is something that unless attention is called to it people perhaps don't think about, but it is a very big item approaching the time when the fruit-trees are all bearing. Here, again, in the Yakima valley, we have a strategic line, so that we can build branches anywhere that it is necessary to serve the public. In fact, we have two under contemplation now to go up into sections where population will in due time develop as the demand for irrigated products increases. In the Cascade mountains there are the coal mines, some of which are controlled in the interest of the Company. There is one group of mines on the east slope of the mountains, and there is one on the west slope, and we have a good capacity and ability to mine there; and that is an important asset to us, because we have a pretty steady coal supply, we

hope, for a great many years, and we have a down-hill haul for our coal from the mine in each direction on the east and west slope of the Cascade mountains, our fuel drops down-hill instead of our having to haul it up-hill, and that is a very important item to us. Now, west of the mountains, our main line and branches are in what is a lumber-producing country to-day, but with some mineral, some coal, and with agriculture and fruit developing as fast as the lumber is cut down, and that is a very, very rich soil everywhere west of the Cascade mountains and there will be great agricultural production there as the timber is cut off and the ground is cleared. It will take some time to do it, but it is coming faster than I imagined it would. I have just been out there and I see evidences everywhere of the growth of agricultural production west of the mountains. We have on our lines in western Washington 583 lumber and shingle mills. It takes a long time to get that many industries established on your railroad, 583 lumber and shingle mills, all of which, right now, seem to be pretty busy. They were pretty quiet last spring. Now, out of the total mileage in that state (1,871.17 miles) 103.88 miles are of doubtful productive value at the present time. They pay expenses but they are not to-day big earners, but some little thing might happen most anywhere with them, some development in coal, that would immediately start them up to have enough business so they would carry their share of the load; but the great bulk of our mileage in Washington, on the present basis of rates, is productive. At Seattle and Tacoma we have very unusual facilities. In fact, the property of our Company in those two towns could not be duplicated either as to location in the town or as to water frontage. Now, in Oregon there are 70.82 miles of main line, giving us an entrance to Portland, and with quite a nice local territory between Portland and the Columbia river. In Portland we own 40 per cent of what is known as the Northern Pacific Terminal Company of Oregon, and we own 50 per cent of the Spokane,

Portland & Seattle Railroad Company terminals. So, through our own ownership in the Terminal Company and the new railroad, we have a very fine strategic position in Portland. This new road, of which we own half, known as the Spokane, Portland & Seattle Railroad, which is constructing from Spokane through to Portland, and which owns a railroad down to the mouth of the Columbia river at Astoria, is a very valuable property, which is going to give us a low-grade line between Spokane and Portland and the Columbia river. And that railroad, together with the grade revisions that we ourselves have been making west of the Rocky mountains, gives us a grade line which cannot be reproduced by any railroad in the United States; because we start at the summit of the Rocky mountains, and we go down hill all the way to the mouth of the Columbia river barring one or two little 22-foot humps on the way to Spokane which one of these days, when the volume of business justifies, can be taken out. And that is a very important thing; we go through the only water-course there is between the summit of the mountains and the Pacific coast, and we are in the Columbia river drainage all the way. Now, this railroad itself (this new railroad) will develop, in time, a good wheat-producing area and a fruit-producing territory. All along the Columbia river there is wheat being raised on the upper levels, fruit being raised, some lumber, and in eastern Washington there is more wheat coming into production all the time. That railroad also gives us an unexcelled line from the foot of the Rocky mountains, at the head-waters of the Clearwater river, to the Pacific ocean, and there is a great territory which is only just touched, and which, in the next ten or fifteen years, will show a very great development, and the Northern Pacific is in a peculiarly strong position to get the benefit of that development—better than any road can get. Now, that grade line, again, is of great importance because, as I pointed out, after we cross the Rocky mountains we are in this water-course, we will have a maximum

gradient, coming east from the Pacific ocean to the foot of the Rocky mountains, of twenty-two feet to the mile—.4 of one per cent; and we will be down-hill going west most of the way. There are a few little places where we have 22 or 26 feet to the mile going west, but as the volume of business is greater east-bound than it is west, the time is certain to come when that adverse west-bound grade is a bad thing, because we always have an excess amount of power going West over what we have coming East. Now, when we get over the Rocky mountains, our road enters the Missouri valley; later on, the Gallatin valley; and crosses the Belt mountains near Livingston. From there we have a grade line to the Head of the Lakes and to St. Paul, and when the work we now have under construction is completed not to exceed 22 feet to the mile at any point, either east-bound or west-bound. And that is a grade line that cannot be excelled or equaled by any other transcontinental road that I know about.

Q. How do your grades compare with the new Milwaukee line?

A. They are very much better, as a whole. I have a profile which I can show, if you would like to see that. But I want to say something about the Milwaukee. Some of the critics of the Northern Pacific have said that the road was improvidently located and unwisely projected, and, of course, the Company has had a hard time up to ten years ago, but it has turned out that its strategic location for serving the country through which it goes is exceedingly good; so good that although the Northern Pacific was projected in 1864 and finished in 1883 and 1886, (that is, 1883 to Pasco, and 1886 over the Cascade mountains,) more than twenty years ago, that the Milwaukee with all the experience that we had and everybody else had, and with an investigation of several years and the best engineers that they could get, came to the conclusion that our route was a pretty good one because they come into the Yellowstone val-

ley and have substantially occupied the same general route that we do for something like 649 miles; which is a pretty good evidence that they thought our location of a way to get across the mountains and through to the Sound was not an improvident and unwise location. Now, on the new Milwaukee the total rise and fall, the total miles they have got to lift their freight getting it from Puget Sound to the Head of the Lakes or to St. Paul, will be much greater than will be the total rise and fall on the Northern Pacific with the adjustments that I have described on the new Spokane line and our changes in the Yellowstone valley; and I claim (and I believe justly) that the Northern Pacific has a value because it is so located that it has now, and always will have, the maximum amount of raw material for the creation of the business for which a railroad is built; that is to say, it has a country tributary to it with varying resources, all of which will support a growing and prosperous population, and a population who will produce and who will consume and who will travel; in other words, make the maximum use of the physical machinery of the railroad. Now, when you come to that physical question, I understand you have considerable testimony in detail; but I want to say this, as President of the Company, I think the property is in very good condition. It has been well maintained, in a progressive manner, for at least ten years, and I know of my personal knowledge for five years. There is naturally a great deal to be done on a great big railroad like ours in a growing, pushing country, but we are in very good shape. Now, we also have an asset which is of value to us; it is hard to measure it in dollars and cents, perhaps but it is a source of strength; we have a coal supply controlled in our interest in the Cascade mountains and in Central Montana, which gives us a feeling of security in being able to keep our engines going, we hope for a great many years, without having to depend on the whims or the fluctuations of coal-miners and coal men generally. The Company has, as an asset,

a reputation and a stability of business methods and a standing before the country as the result of years of active and intelligent effort on the part of the management in exploiting a location, in service, in capacity, and in the advantages of the road as a great piece of commercial machinery. Now, in twenty-four years the Northern Pacific has spent $8,677,665.15 for that purpose in advertising and in its outside agents who have gone all over the United States telling about the Northern Pacific and soliciting business for it and placing the advantages of its territory and of its railroad before the public. Well, that is a large sum and the accumulated energy of that expenditure is very great. It would take a great many years to get that knowledge of the Northern Pacific before the country if we should start, brand new, to-day. You can't measure what that accumulated knowledge means to you. Now, we have another very peculiar asset. We are fortunate enough to have a large right-of-way, which was given to the Company in order to induce the promoters to engage in a very hazardous enterprise. Now, because of that large right-of-way and because of the very extensive terminals which have been acquired from time to time, there are very, very many business enterprises located adjacent and on our rails, all of which do business with us, and all of which create travel incident to that business. Now, any new road, even of a like physical character, would have to spend many years before they could have a similar number and quality of business institutions located on its line. Now, the number of business enterprises occupying under lease the right-of-way and terminal grounds of the Northern Pacific to-day is 3,976, not counting leases simply for cultivation or pasturage or irrigating ditches or pipe-lines, but enterprises such as coal-docks, coal-yards, coal-bunkers, flour-mills, stone-crushers, elevators, grain warehouses, wholesale houses, brick-yards, oil-tanks, fish houses, cement plants, packing houses, cold-storage plants, miscellaneous business houses, all producing business.

For example, at the Head of the Lakes and in the Twin Cities, some of the most important fuel-docks and yards are on our grounds. At Spokane, the majority of the most important wholesale houses are on the Northern Pacific line. At Fargo, Helena, Butte and Missoula, and other intermediate points along the line we have some of the most important business houses. At Tacoma, the chief docks for export and import, the grain elevators, the grain warehouses, are on our ground. The International Fisheries Company, one of the largest, I believe the largest fish concern in the country, have recently made a thirty-year lease and located on our ground. At Seattle the same conditions exist. In addition to these 3,976 institutions which are on our ground and which naturally, if we give good service and equal rates, do business with us we have over 1,300 separate spur-tracks leading to the various kinds of business enterprises where we do not own the land but the freight for which is handled by our Company. On many of these tracks there are more than one business enterprise. In Seattle, for example, there are twenty important business enterprises located on one industry track and room enough for 100 more to come. This is a very, very great element of strength, and as the population grows to it in these big cities, we are in a peculiarly strong position to get the benefit of that growth and attract other institutions to our rails, and with the improvements we are making on our existing road, with its coming low grade, we are in a peculiarly good position to transport, quickly and with the minimum amount of interruption, the products and shipments of those business enterprises. Now, as a pioneer line across the country, we think we have some value because of the things that I have just pointed out. Business has clustered and centered about us like a coral that keeps growing; you go to a great many towns on the Northern Pacific and find the hotels near to the Northern Pacific station; you find that the retail stores are near the Northern Pacific station. We go

through the state capital in all of the states that we serve except Wisconsin and Oregon. The state capital there, as you know, is Salem, south of Portland. We have tried to take care of our passenger business and make living conditions on the Northern Pacific satisfactory, and I think, barring the small frictions that come up at all times in the conduct of a large railroad, and especially during the last three years when we have had so much railroad agitation, that the people living along our road feel that we have been fair in trying to meet the necessities of the situation. Now, we have in reserve another element of value which is important as time goes on: We have timber lands, which, in time, will be used for producing ties. The tie-question is a very important one in this whole country, a very embarrassing one. We are fortunate enough to own some timber land in Montana that will give us ties, unless forest fires come, for a great many years to come. So that I say that the Northern Pacific has to-day all of the elements of a successful business enterprise. It has a good location for its business to-day and has a good location for future development. It has good connections at all its important points with other carriers, both rail and water, unexcelled facilities for exchange between rail and water. It has good physical machinery, which can be made better as tonnage and travel demand; and it has unequaled terminal facilities at the main terminals and at all the intermediate terminals. It has the raw material in a productive territory adjacent to its line, which is supporting a large and growing population. It has had a careful and honest management for a term of years. It has an accumulated reputation for honesty and fair dealing. It has accumulated a large amount of business enterprises on and adjacent to its right-of-way. It has a publicity before the American people for twenty-five years as a great highway from the Mississippi valley, and the great lakes to Puget Sound, the Columbia river and the Pacific ocean. It has a very small amount of dead mileage that

will not produce tonnage. On June 30, 1908, we owned and controlled 6,284.59 miles of railroad; we owned and controlled 8,901.21 miles of track. Of this total amount of track there is perhaps 221.44 miles that are not making some return under the present business conditions, but, as pointed out, the development of the country and the increasing population, may at any moment transfer this amount of track into a paying property.

Adjourned until the morning of Thursday, November 19th.

FEDERAL BUILDING, St. Paul, November 19, 1908.
Hearing resumed at 10 A. M.

HOWARD ELLIOTT,
recalled, his direct-examination was resumed.

By Mr. How:

Q. Mr. Elliott, what elements of value are there, in your opinion, that appertain to an old-established, going concern, like the Northern Pacific Railway System, as it now exists, and a newly constructed system turned over for operation to the operating department?

A. I tried yesterday to state some elements that seemed to me to give value to our property over and above what it would be worth if it could just be placed physically across the country the way it now exists. Of course, that is a difficult supposition, but assuming that it could be created and put down ready for doing business, it seems to me there are quite a number of elements of value that the age of the company gives to it in its present form, over and above what it would have as starting out new in business. To begin with, a railroad, like any other large business enterprise, has to learn a great deal in the conduct of its affairs. There are a great many little, and some big, obstacles and difficulties to over-

come and smooth out and adjust in your physical machinery, in your terminal development, in your relations with your customers. After being in business ten, fifteen or twenty-five years, you have ironed out a good many of those; although there are all the time coming up new ones, and there is a gradual perfection of business methods that is developed in a great concern, whether it is a railroad or any other type of commercial enterprise, there is a sort of manner and custom that will grow up about doing business in a country, and it has got to be learned and you have got to adjust yourself to it. In doing that, you gradually organize a staff of trained employes, some of whom, of course, will fail, as is the case everywhere, but in the main you build up a staff of intelligent men who get a knowledge of the country, a knowledge of your business methods, a knowledge of the manners and customs of the business men in the country, and you get a commercial force added to the physical machinery which increases its value as a tool of commerce. While all of that is going on, you build up a reputation for reasonable dealing and for prompt service. You have eliminated one by one, some of the difficulties in conducting your business and some of the little obstacles. You have perhaps the good will of shippers who feel disposed to give you business because they know you. You have the accumulated commercial energy of a large number of customers who are about you and who have settled their channels of trade in connection with your railroad. The country highways have been developed more or less, leading to your railroad; the trend of business has been that way. Then you have established, through your staff and through the work of the business men along your line in connection with your staff, a commercial interchange, the establishment of customers at far-distant points. The man in the Yakima valley who is selling apples has, in a term of years, established a customer on the C., B. & Q., down in St. Louis; if he started out brand-

new, no doubt in time he would have the same customer, but it would take him time. You have got, through the C., B. & Q.'s connection with the Northern Pacific, the widest possible market in which to sell the products on the Northern Pacific and the greatest possible market from which to buy products going into the towns and country of the Northern Pacific, there is a great accumulated energy of business. You might liken it, perhaps, to a large dry-goods house, if you like, coming here to St. Paul, that would have just as many buildings and just as many traveling men and just as many efficient office-men and just as many brains in the management, just as much knowledge of the dry-goods business, that would start out to get a share of the trade west of the Twin Cities, it could not begin to do as much of the trade as its physical facilities enabled it to do as a concern of equal capacity that had been here for ten, fifteen or twenty-five years. Or, the same thing would come up about a doctor or a lawyer, a well-equipped doctor or lawyer coming into the town, knowing just as much about the details of his business, naturally could not get as much business in a year, or two years, or three years, as an equally well-equipped doctor or lawyer who had been in that community for ten, fifteen or twenty-five years. In other words, doctors have, as I understand it, what they call "seconds." They have a patient, and he is pleased with them, and he recommends him to another patient, and that goes on. Well now, we claim that the Northern Pacific has a very, very large number of seconds and thirds and fourths and it runs up into hundreds of thousands, almost, on account of the accumulated business energy and the great commercial force of the institution as a going commercial enterprise; and it seems to me that, assuming you could create an equally good commercial machine and put it down on the ground, ready for business, it of necessity could not have the commercial value on the day it started doing business that it has to-day after ten, fifteen or

twenty-five years of business relations with all sorts of men and all sorts of country and with the constant push of a lot of people placing it before the public endeavoring to attract trade and travel to it.

Q. Now, to what do you consider the accumulation of those elements and the possession of that strength by the Northern Pacific to be due? I might suggest to you whether you consider it due to able, good, careful, honest and conservative management by the officers of the Company of its property.

A. Well, for the last ten years, since the receivership, I think it has been due in large part to the care and honesty and willingness and desire of the officers, large and small and high and low, to try to serve the public and to put themselves in the position that the best interests of the Railroad are served by giving good and reasonable service to the public. The physical machinery has a part to do with it, but that has been perfected during the last ten years, also; but the organization of your staff and the trying to get good men and trying to realize that you must be reasonable in your business dealings has a good deal to do with building up a trade for a railroad just as it does for a hotel or any other institution.

Q. Have you considered how much, in money, the value of the Northern Pacific System, as it now exists, exceeds the value of a system presently constructed without the advantages given to it by this series of years of operation and management?

A. That is a very difficult question to answer.

Q. You might answer that yes or no, whether you have considered it.

A. Well, I have, yes; I have naturally given some consideration to it, not because of this case, but in discussing it with the owners of our property, who of course ask me at all times what I think about the situation, and I have used these same statements in talking it over with the stockholders and

bondholders of the Company, as showing them what I think is an element of strength in their property. I have considered it for several years.

Q. How much greater, in your opinion, is that value?

A. Well, I don't know that I could put it in money. I know this—and you gentlemen know it who live here—that, for many, many years the Chicago, Milwaukee & St. Paul road was, and is to-day, the strong railroad line between the Twin Cities and Chicago. It has built up a fine reputation, has a good railroad, gives good service, controls a lot of business. Now, the C., B. & Q. started in in 1886; Mr. Touzalin, I think it was, started in to build the road from St. Paul down to a connection with the C., B. & Q. in Illinois. That is a very good railroad to-day, good service, good people; they have been at it twenty years, and yet they can't say to-day that they get as much of the going business between the Twin Cities and Chicago as the St. Paul road does. They are doing very well, and they are increasing, but the St. Paul has the accumulated energy of being here first and a course of continuous good treatment to the shippers and traveling public, and they have a value as a Chicago-St. Paul line which to-day is greater than ours, although physically I think ours is just as good. Now, we are in a good deal the same position between a good many points on the Northern Pacific at eastern points and in the far West with these great highways, as I tried to point out yesterday, and we have got this accumulated energy, and I should say if we were going to try to value it that, anyway, our property would be worth fifteen per cent more, as a commercial enterprise for doing business; that is, that for doing the business for which a railroad is established, transporting people and property, we are at least of fifteen per cent more value as a business concern than if we were brand new. I would say that as a minimum, and I don't know but that is pretty low; it might run up, as a maximum, a good deal higher; I wouldn't

want to say how high, but maybe up to twenty-five per cent. Just as you might go back to the dry-goods expression, a dry-goods house that has been in business twenty-five years and has a line of trade, has certainly got a very much larger value as a going business enterprise, a commercial machine, than one which starts to-day.

I call your attention to Complainant's Ex. CC—Gray, which purports to be a condensed balance-sheet of the Northern Pacific Railway Company, taken from its general books, under date of April 30, 1908. There is in it an item, under the head of Reserve Funds, of $9,157,246.36. Will you explain what is comprehended within those "reserve funds," and what the account means?

A. That item on the credit side of our balance-sheet represents an accumulation since the receivership of moneys set apart for care of the property, partly for what is known as depreciation of equipment. As cars and engines become old and not desirable for the class of business that they have to perform, they are torn down and thrown away, and in buying new ones, of course we buy the very best that we can get under modern practice; and the Interstate Commerce Commission has recognized that idea, and we have orders, in the last two years, to create such funds, but we had started in (our Company) to do it before the Commission gave such orders. In that fund, for that part of the property, there is something like $3,000,000, I think. The balance, $6,000,000, has been set out from time to time to care for such great structures as the Columbia river bridges, Duluth bridges and deterioration of ballast. And we also, at times, did find that, on account of the scarcity of labor, we couldn't do all of the work we wanted to within a given year.

Q. Work of what character?

A. Maintenance work on the railroad. We couldn't put out

as many million yards of ballast on the railroad as we wanted to—

Q. Not referring to new construction?

A. No, nothing to do with new construction. —as many million yards of ballast on the existing road as we wanted to, not on account of an unwillingness to spend the money, or a lack of the money, but simply because we could not get the labor with which to do the work. We therefore, in one or two years like that, charged up what we thought we ought to have spent and put it into this fund with the idea that we would spend that money in a subsequent year and do more that year than the particular year's expense would justify. In other words, it was a prudent method of bookkeeping, such as a mill-owner or a property-owner would adopt in years of reasonable prosperity, being liberal with his expenses and providing, a little, for a poor year that might come to him. Now, that fund is not represented in our assets, on the debit side of our balance-sheet, by any particular amount of cash or in any particular treasury security, it is simply in among the general fluid assets of the Company on the debit side of our balance-sheet; but we are bound to keep it intact and use it for the benefit of the property as time goes on.

Q. The statement contains, under the head of Liquidation Fund, an item of $65,498.87. Will you explain what is comprehended within that fund and what it consists of?

A. When the Northern Pacific Company was reorganized and turned over to the new Company, in 1896, there were, of necessity, in as large a piece of machinery as it was, a good many things that were more or less unsettled, and the reorganization committee and managers at that time, apparently realizing that the new Company would have to settle some of these claims, either legally or because it would be good business policy to do so, reserved a certain sum of money and set it apart which would be used to settle claims for transactions prior to

the beginning of the life of the new Company.

Q. How much was in that fund originally?

A. There was $3,556,660.79. Then, when the St. Paul & Duluth Company was purchased by the Northern Pacific Company, there was $35,000 set apart to take care of any obligation of the old Company that might appear and have to be paid by the purchasing Company, and the sum of those two liquidation funds was $3,591,660.79. That has all been used up in paying these claims prior to the receivership and prior to the purchase of the St. Paul & Duluth, except this sum now shown on the balance-sheet; and whether there will be any more claims presented or not it is hard to tell. There are some lawsuits going on now, I believe, which, if successful, would much more than use up the amount still remaining in the fund.

Q. How recently have any such claims been recognized and settled by the Company?

A. The last one that I remember was some trouble about a lead shipment between Liverpool and Puget Sound. I think we settled it within the last two years.

Q. There was a long-continued litigation over that?

A. Yes.

Q. I find under the head of Insurance Fund an account of $2,228,448.26. Will you explain what that insurance fund is?

A. Our Company, in common with many others, and particularly the Pennsylvania company, has adopted a plan of setting apart certain moneys and securities to create an insurance fund, the interest upon which in time, perhaps, would about carry the ordinary fire losses of the Company. That fund has been built up since July 1, 1898; it has been built up by payments made by the Railway Company and charged to its operating expenses into the fund on which payments were approximately what we would have paid to an outside insurance company, never more, in the regular monthly or yearly payments. Then, in addition, the Company has, from time to

time, set apart actual moneys for the creation of this fund; and while the fund on this balance-sheet here shows, as you state, $2,228,448.26, it was deemed wise, considering the increase in population, the greater number of congested points on the line of the Company and the greater danger from fire, to make the fund larger; so today the total of the fund is $5,000,000. That is on the debit side of our balance-sheet. That fund is not merged with the general funds of the Company, but is kept entirely distinct and is invested, under my direction, in first-class bonds, largely of our own issue or those that would be similar to the investments of a savings bank. That is a permanent fund, which we think is sound in business policy, not only for the protection of the owners of the property, but for the general protection of the people who use our property, because it gives us an immediate fund that we could have in case of any great fire.

Q. It is, in general, then, the creation of a fund by the application of the amount of premiums which you would have to pay for insurance, for the purpose of insuring your own property?

A. Yes. I will state, as a matter of information, that since the plan was started, July 1, 1898, to December 31, 1907, the profit from the direct operation of the fund has been $127,401.66. But we have been fortunate in not having a serious calamity. That is, what we have paid into the fund, less what they have had to pay back to us for fires, etc., has left the fund $127,000. That is the only charge in about ten years that has been made to operating expenses because of this fund, about $12,000 a year. But one fire might have wiped it all out.

Q. Mr. Gray's statement shows, under the head of Profit and Loss, $52,900,073.30. Will you explain that account.

A. Well, that account in our balance-sheet of profit and loss represents what was left over from September 1, 1896, to the date of this report, April 30, 1908, after the owners of

the property had paid the operating expenses, had paid the taxes, had paid the interest on the bonds, and had paid the dividends on the stock. After doing all that, in the eleven or twelve years that the Company has been going on, they had $52,900,000 more

Q. What have been the dividends upon stock during that time?

A. The average annual dividend paid on the stock of the Company up to April 30th has been 4.94 per cent; the average return on the par of the entire capitalization of the Company was 4.29 per cent; but it is fair to point out, at least it seems to me it is fair to point out, that the par of our capitalization does not, anywhere near, represent the value of our property.

Q. The value of your operating property?

A. The operating property.

Q. Now, proceed, please, with your explanation.

A. Now, as I say, that $52,900,000 represents what the owners of this property have obtained from all sources of income that they had in excess of the payments that they were obliged to make for expenses, taxes and interest and the payments they did make, and on dividends. If they had paid out the whole $52,900,000, not accumulated any profit and loss, in that case, the average return on the property would have been 5.675 per cent per annum.

By the MASTER:

Q. I understand you are speaking now of the operation of the road?

A. Yes, sir.

Q. Operating expenses and returns?

A. Well, I include, Judge, also what they got from interest on bank balances and things of that sort; that is also in here, and I will explain that later. This sum is accumulated from transportation of freight and passengers, and also from certain

miscellaneous sources. Well, now, if they had paid out the whole $52,000,000 returns on the property, they would of necessity have had to borrow from time to time certain sums (we don't know how much) to carry on the Company, and interest would have had to be paid upon that, so that the average return would have been less, you would have had a higher amount of capital upon which you had to pay a return. But now, let us see what has been done with the $52,000,000. We have, in fixed property, that we could not readily dispose of without disintegrating our system, as shown by this balance-sheet, the general capital assets of Northern Pacific estate and equipment, etc. (all of the things that are added up here), amounting to $489,000,000, plus; we have securities, representing fixed property, which is an integral part of the Northern Pacific System, $2,460,000; we have advanced to build railroads which are an integral part of our property, $34,770,000; we have material on hand which we must have for the ordinary operation of the property, $6,370,000 odd; making a total of what you may term fixed property, that we cannot give away or dispose of, of $533,902,581.65. Against that we have received, from stock and bonds and from the subscriptions of the new stock, up to the date of this balance-sheet, $5.. 38,555.64. The difference between those two sums is $19,334,026.01. That represents an amount that the owners of the property have put into fixed, immovable property, over and above what has been obtained by the issue of securities, and there is where $19,000,000 of this so-called profit-and-loss account of $52,900,000 has gone. Now, we have on this same balance-sheet current assets, items that we could convert at once into cash, as follows: Cash itself, $26,320,000 plus; accounts and bills receivable, $11,047,000 plus. And I am glad to say that these accounts and bills receivable, we think, are worth what they are put down at here; we have been fortunate in having a very thorough accounting machine, and we have lost very little money through bad debts;

securities, $14,757,000 plus; or a total of current assets of $52,126,334.28. Those are fluid assets. Now, as against that, we have, on the same date, liabilities which we must take care of out of those fluid assets. Ordinary accounts payable, $5,888,000; taxes accrued, $1,336,000; interest accrued, $1,208,000; and we carried into that account this liquidation fund of $65,000, because we must have that on hand to offset the liquidation fund; making a total of $8,498,873.96. So that the difference between the $52,000,000 of current assets and the $8,498,000 of current liabilities is $43,627,460.32. Add that to the $19,000,000 above spoken of, and you have $62,961,486.33, which is the sum of your profit-and-loss account and of this reserve fund which I have already explained. Now, I have just pointed out to you that of this total excess the owners of the property have put into the fixed property, for the creation of additional facilities, $19,334,000; I have given testimony that in my judgment it is not an improvident thing for a company as large as the Northern Pacific to have set apart a working cash capital of $15,000,000, and I think that working cash capital is just as essential for the well-being of a great enterprise like the Northern Pacific as it is to have engines and docks and good track, and if we set apart $15,000,000 for the purpose of conducting the affairs of our Company, we are just as much entitled to have a return on that as we are on a Malley engine that we use to push trains over the Rocky Mountains. Then we have set apart, as already pointed out, the $9,000,000 of this special reserve fund and the $5,000,000 of the insurance fund. You add those sums together, and it is, in round figures, $48,334,000. You deduct that from the $62,961,000 just spoken of—which is the total of the so-called reserve fund and the profit-and-loss account—and you get $14,627,000, which is an apparent excess, or what the public like to roll around in their mouths—"a large cash surplus." That profit-and-loss account has been accumulated not only by transporting freight and

passengers, but by the miscellaneous income of the Company, from interest on its bank balances, from various rentals and from sources that have nothing whatever to do with the transportation of people or property; and that sum from September 1, 1896, to the date of this balance-sheet—

Q. You mean derived from such sources?

A. Derived from such sources;—that sum was $14,082,484.11. And I have gone into that at this length because this same matter came up in one or two other cases that we had, and it has occurred to me, and to others interested in our property, that while we are all prosperous and we are glad of it, this so-called surplus is nothing to be ashamed of, it is a protection to the integrity of the property, and in that way a protection to the patrons that we are trying to serve, and when you analyze it carefully you find it is not a great amount of cash that is over that you can do anything you want to with, in justice, it is allotted as I have tried to point out, and on my analysis made to-day there is an apparent excess of this $14,000,000 odd (which we are glad to have), but that has not come exclusively from the earnings from freight rates or passenger rates but has come in part from other sources of income that our Company is fortunate enough to have.

Q. Supposing you had paid your entire profit and loss to your stockholders from time to time since the reorganization of 1896 up to the 30th of April, 1908, what percentage upon the capitalization of the Company would they have received, supposing you had paid it out to both stockholders and bondholders?

A. If we had paid out the amount shown on the balance-sheet to which we are referring to the credit of profit-and-loss, then the average annual return upon the par of the capitalization of the Company would have been 5.675 per cent. I mean everything we have to pay to the public, interest on the bonds and dividends, everything that we have issued, in order to get

money, whether it is bonds or stocks or notes.

Q. I show you Complainant's Ex. 32—Elliott, and ask you what that is.

Mr. O'BRIEN: The paper shows for itself, I presume, and I suggest that there is no necessity for the witness to state what it is. He might state when he first saw it and when he received it. We object to the question asking him to state what the paper is. I think the witness ought to be confined to stating his knowledge as to when he received it and the circumstances of having received it.

The MASTER: The objection is noted.

A. This is a telegram that I received when I was in New York from the signers of the telegram, Charles E. Perkins and David C. Shepard. I was in New York in the spring of 1907, during April, and was at my New York office on the date that this message was received, and it is the original message that I received there.

Mr. HOW: I offer it.

Mr. O'BRIEN: We object to it as incompetent, irrelevant and immaterial, no foundation laid and not the best evidence. There is no evidence in this case, up to the present time, that either Mr. Perkins or Mr. Shepard are stockholders, or that they sent this or any other telegram, and we therefore object to this evidence for any purpose.

The MASTER: Objection noted.

Q. I show you Complainant's Ex. 33—Elliott, and ask you what that is.

A. That is a copy of the record of a meeting of the executive committee of the board of directors of the Northern Pacific Railway Company, held in New York on or about April 22, 1907; I can't testify whether it was that day or the next.

Q. Were you present at that meeting?

A. I was present and presided over the meeting.

Q. Were those proceedings had at that meeting?

1287

A. They were.

Mr. HOW: It is offered.

Mr. O'BRIEN: In view of the statement of counsel that we may inspect the original at any time it becomes necessary, we do not object to this exhibit upon the ground that it is only a copy; but we object to it in so far as it may be taken to establish the fact of a telegram having been sent by the Complainants, or as to the contents of the telegram, or for the purpose of showing any demand made upon the officers of the Company; and our objection is that for that purpose it is incompetent, irrelevant and immaterial and not the best evidence.

The MASTER: Objection noted.

Q. I show you Complainant's Ex. 34—Elliott, and ask you what that is.

A. That is a copy of a telegram sent by me to Mr. D. C. Shepard, from New York, on April 24, 1907.

Mr. HOW: That is offered.

Mr. O'BRIEN: That is objected to as being immaterial in the present state of the testimony, no foundation laid at this time; in other words, that this testimony is immaterial until competent, proper evidence, is introduced showing the proceedings leading up to this telegram.

The MASTER: Objection noted.

Q. Mr. Elliott, do you know, of your own knowledge, whether at the date of the telegram, April 22, 1907, and at the date of the beginning of this action (I think May 27th to the 31st, some date in there, 1907), Messrs. Perkins and Shepard, the Complainants in this action, were, respectively, stockholders in the Northern Pacific Railway Company?

Mr. O'BRIEN: That is objected to as incompetent, not the best evidence.

A. Yes, sir.

Q. What information have you on that point?

A. Why, I have a list of the stockholders of the Company, that was made up by the secretary in New York and is submitted to me from time to time, which list shows an accurate statement of every stockholder of the Company, and which is naturally of use to me in considering the interests of the Company; and that list discloses that both these gentlemen were stockholders at that time.

CROSS-EXAMINATION.

By Mr. O'BRIEN:

Q. Mr. Elliott, among the assets of the Northern Pacific, which you have described, are shares of stock in other corporations, I believe?

A. Yes, sir.

Q. Amongst others, the capital stock of the Northwest Improvement Company is owned by the Northern Pacific, is it not?

A. Northwestern Improvement Company is the correct name.

Q. Northwestern Improvement Company?

A. Yes, sir. We own the capital stock of the Northwestern Improvement Company.

Q. The par value of that capital stock is how much?

A. The authorized capital, I think, of that company is $3,000,000, and there is issued $2,775,000.

Q. All of which is held and owned by the Northern Pacific Railway Company?

A. Yes, sir.

Q. Are you prepared to present a statement as to the assets and liabilities of the Northwestern Improvement Company?

A. I can.

Q. Will you do so?

A. I have no objection to doing so.

Q. Have you it with you?

A. No, sir.

Q. When could you present such a statement as that?

A. Why, I could present it, presumably, to-morrow.

Q. Well, that would be very satisfactory.

A. What date do you want—to-day?

Q. I think it ought to be the same date as the other one, April 30th, 1908. I believe there has been a dividend paid since that time; if you desire to note that fact, of course, there is no objection to it. In describing the Northern Pacific System you have referred to several independent corporations, such as the Minnesota Transfer Company, the transfer company at the Head of the Lakes, the Union Depot companies at these different terminals; all of those are independent corporations?

A. Yes, sir.

Q. In which the Northern Pacific holds a greater or less proportion of the stock?

A. That is correct.

Q. And, in many of them, dividends are paid and have been paid upon this stock?

A. Is that a question?

Q. Yes, sir.

A. I couldn't say that dividends have been paid in many of them. I think dividends have been paid in some.

Q. I will mark all these "Question" if you wish.

A. Well, I didn't understand whether you made that statement or asked me.

Q. It was an assumption that I wished you to affirm. In some of them, at least, dividends have been paid?

A. Yes, sir.

Q. Each of those corporations is managed independently, is it not?

A. In so far as its local management is concerned.

Q. So far as its local management is concerned, and its accounting and its earnings?

A. Yes.

Q. Is it true that in each of the corporations, or to each of the corporations, when a service is performed by it, your Company as well as the other company, pay a charge?

A. Yes, sir.

Q. And those charges constitute part of the operating expenses of the Northern Pacific Railway Company?

A. Yes, sir.

Q. And are so entered upon your books?

A. Yes, sir.

Q. Do you claim that in ascertaining the value of the property of the Northern Pacific upon which a return should be made the value of the Company's holdings in those independent corporations should be taken into consideration?

A. I do.

Q. So that when you spoke of the excess value of the System upon which a return should be made, over and above the par value of what you have designated as the capitalization, you included the interest of the Northern Pacific Railway Company in all of these other corporations to which we are now referring?

A. I did; I included everything that represents the Northern Pacific as a going concern.

Q. And that, entirely irrespective of the fact as to whether such other corporation had paid dividends upon its stock or not?

A. Yes, sir.

Q. I understand that the Northern Pacific System consists of twelve divisions.

A. Twelve operating divisions.

Q. Twelve operating divisions?

A. Twelve superintendents in charge of different—

Q. And those divisions vary in mileage?

A. Very much.

Q. Could you give us an average length of a division of the Northern Pacific Railway System?

A. I could give it to you very accurately, if you want to wait for it, because we have that all tabulated. I think it is shown on the map of Mr. How's. I think the longest division is something like 560 or 570 miles; that is my recollection. I never tried to charge my mind with those, because we always have this blueprint in front of us with a caption upon it which shows exactly how much is in the division and how much of it is main-line and how much of it is branches.

Q. Those divisions have been established more with reference to the character of the roadway than to anything else, have they not?

A. Yes, I think that is rather a fair way to put it with reference to the general physical characteristics of our railroad.

Q. State lines have had nothing whatever to do with the establishment of divisions?

A. Nothing.

Q. And you expect to change the character of the trains more or less upon the different divisions?

A. Well, I will state, Mr. O'Brien, what our plan is in that. We are trying to get our road so adjusted as to grades that we can get a uniform train, that is, that can haul two thousand tons from St. Paul to Staples, that will also be able to haul two thousand tons from Staples to Dilworth, two thousand tons from Dilworth to Jamestown, and two thousand tons from there to Mandan, and two thousand tons from Mandan west. We are accomplishing that by a revision of grades and the allotment of power that is competent to take the same trainload over a higher grade that a smaller engine will take over a lower grade.

Q. That is, at the present time, your efforts are limited to so adjusting your grades that you can, as you say, haul a

train of a certain weight from one end of a division to the other with the same power?

A. Yes.

Q. But you do not undertake to haul a train of the same weight over different divisions with the same power?

A. Not over all of the divisions. Some of them have the same gradients as the neighboring division. In that case the same engine would do the same work.

Q. Oh, certainly.

A. That must be so.

Q. But, at the present time, your efforts are directed to securing uniformity upon each division?

A. On the main line of each division. The branches are a different problem.

Q. In classifying freight, therefore, freight which passes over an entire division should be classified as through freight, should it not?

A. Not in our definition of the word "through."

Q. What is your definition of the word "through?"

A. Well, as you are using the word "through," freight might pass from St. Paul to Staples, and would pass over the entire St. Paul division, but we would not designate such a shipment as "through freight" unless it was going clear beyond.

Q. How far beyond?

A. Well, we would call any local freight business that would terminate—we call local freight, really, in our description of it, anything that originates on our rails and terminates on our rails, no matter where it originates and where it terminates; we call it local to our road, a shipment originating in Staples and going to Bozeman.

Q. Or a shipment originating in St. Paul and going to Portland?

A. Yes, sir.

Q. You consider that local freight?

A. Yes, sir, but it doesn't use any other railroad.

Q. It is local to your railroad?

A. Yes.

Q. But there is also a division of freight upon your road, is there not, between local and through freight?

A. I don't understand the question.

Q. In speaking of the freight on your road, exclusively, the freight which begins and ends upon your road, exclusively, is it not proper to divide that into local and through freight?

A. Why, yes; perfectly proper to divide it, yes.

Q. Well, isn't that the custom?

A. Well, I don't know that I follow your thought, but perhaps I do. We load what you may call a pick-up car which runs a short distance; we load another car which runs a longer distance; we load another car that runs a still longer distance. Those cars all would contain freight that originates on the rails of the Northern Pacific and terminates on the rails of the Northern Pacific. They all would probably contain freight that originated off the rails of the Northern Pacific and was delivered to us by connecting lines at different junctions, and, for the purpose of consolidating shipments, we load them in the same car with the shipment that originates on the Northern Pacific and terminates on the Northern Pacific.

Q. Oh, yes, I know. We will get that afterwards. Now, it would be unfortunate if we misunderstand each other in our use of terms.

A. Yes.

Q. And the term "local" or the term "through" is capable of different meanings, as you happen to use it, I presume?

A. Yes, sir.

Q. Now, I am speaking of freight which is confined exclusively to your road, and, so far as that freight is concerned, it may be divided into through and local freight, may it not?

A. It may be, yes.

Q. And there has been a great deal of discussion about what is through and local freight, has there not?

A. Yes.

Q. Now, is it not true that freight which goes over one entire division is through freight as to that division?

A. Yes.

Q. And is it not properly classed as through freight?

A. Well, I see no objection to classifying it that way.

Q. Well, it is generally conceded, is it not, that the cost of transportation is less as to through freight than it is as to what is termed local freight?

A. Yes, sir.

Q. And that cost is less as to through freight because the time occupied in its transportation is less, there are fewer stops, there is less fuel consumed, the men are not delayed by switching and matters of that sort; isn't that true?

A. That is correct.

Q. Now, as I understand it, it would make no difference whether a train leaving St. Paul was destined for Portland or was destined for some point between St. Paul and Portland, that train would be stopped at every division?

A. Every divisional point.

Q. Every divisional point?

A. Yes, sir.

Q. The number of cars might be changed at that division,—

A. That is right.

Q. —the cars in any such train might be transferred to any other train?

A. They might, yes.

Q. The amount of power attached to the train would be adjusted according to the conditions of the division it was to cross over next; is that not true?

A. That is correct.

Q. Consequently, when you have freight which passes over

an entire division, so far as that division is concerned, it is transferred most economically, is it not?

A. We try to arrange it so.

Q. Well, I am speaking with regard to the different classes of freight.

A. Yes.

Q. That is the kind of freight that can be transported with greatest economy?

A. Yes, if there is no break in the bulk anywhere.

Q. Is it not perfectly fair, then, Mr. Elliott, in endeavoring to ascertain the cost of transporting freight, to class as through freight, freight which passes over an entire division, and as the local or more expensive freight, freight which does not pass over an entire division?

A. Why, I should think it would be fair in trying to arrive at any cost to endeavor to segregate it.

Q. Yes, I am trying to get your ideas, Mr. Elliott, as to what would be a proper basis to proceed upon.

A. Yes.

Q. Most of us here are groping a little bit in this case, and you must be patient with us.

A. I am.

Q. So that, in your judgment, that would be a proper division to make,—ascertain what freight was carried over an entire division, and, as to that portion of the haul, at least, class it as the through freight, and freight which went for a less distance, class it as local freight?

A. I see no objection to making the effort to do it.

Q. Well, don't you see any advantage in making the effort?

A. Not at all.

Q. Is there anything in the railroad business or the matter of conducting transportation which puts it in a different class from every other business?

A. Not in my opinion.

Q. Now, you know that practically in every class of business that is carried on, mercantile and manufacturing, an effort is made to ascertain the cost of each service?

A. Well, now, I assume it is.

Q. And presumably successfully. And isn't it possible to do that in the case of a railroad?

A. We try as hard as we can.

Q. Well, now, in doing that, would you make this division of the freight?

A. No, sir.

Q. What division would you make of the freight?

A. Don't make any.

Q. You would not attempt to ascertain the cost as to any particular service?

A. No more than a packing-house man would try to find out the cost of a sausage as compared with the cost of a pail of lard.

Q. Don't you think he does?

A. I think not. I don't know, but I don't see how it is possible to take a pig and say how much of the product of the pig —what the cost is of transforming the pig into lard or the cost of transforming it into sausage.

Q. Well now, if, as a matter of fact, they do that very thing, your illustration wouldn't be—

A. Wouldn't be good in that case, no, they would have a refinement of accounts that is very great and of very doubtful value.

Q. Well, is it your idea that in establishing the price of a pail of lard the manufacturer proceeds entirely without regard to the cost?

A. No; he considers ultimate cost.

Q. Then he must have, or in fixing the price of the sausage, he proceeds entirely without regard to the cost of that sausage?

A. He takes ultimate cost of all the things he has got.

Q. But he does come to some conclusion—

A. Yes.

Q. —as to the cost to him—

A. Yes.

Q. —of that particular article, does he not?

A. Yes, he comes to some conclusion.

Q. And you must come to some conclusion as to the cost of the service you render before you fix the price for that service, must you not?

A. We have very little to do with fixing the price of the service?

Q. You must come to some conclusion as to the cost of the service before you determine what a fair price is, must you not?

A. Yes, sir.

Q. And in doing that, do you not have to analyze the service performed?

A. We try to.

Q. The character of the freight hauled?

A. We consider that in making the rates.

Q. Now, in every class of service that you perform there are certain elements of cost which can be accurately ascertained, are there not?

A. Certain ones, yes.

Q. There are a large number of others, though, which cannot be definitely ascertained or allocated?

A. They cannot, in my judgment.

Q. Then, in endeavoring to arrive at a reasonable conclusion as to those matters, the effort should be to ascertain upon what theory or proportion they should be divided; is not that so?

A. Why, yes, if you are going to try to get at cost, you have got to have some theory.

Q. Well, don't you think that it is possible to arrive approximately at such cost?

A. I don't think you can say what it costs to transport a pound of groceries between any two given points.

Q. Then there is no way of establishing what is a fair rate?

A. Commercial forces establish that.

Q. Simply commercial forces?

A. Yes, sir. The same thing that establishes the price of the sausage.

Q. You think the same rules should apply with regard to the rates to be charged by a railway company as would apply to a butcher in selling sausages?

A. I do, yes.

Q. Well, now, on the assumption that that is not the law, upon the assumption that it is the duty of the public-service corporation to limit its charges to a fair return upon the property, which it or he has invested, and not simply as Shylock says, "to make what merchandise he will," do you think that the cost could be ascertained?

A. You can get what we call an average cost, Mr. O'Brien, but even that is a good deal of a guess.

Q. Well, now, of course there is no doubt, I suppose, in anybody's mind, Mr. Elliott, that cost cannot be determined exactly, to the fraction of a per cent, but what I am endeavoring to ask you, frankly, is whether or not you can't get within approximately the cost of service of a class of service.

A. Well, we get a figure; we get a figure in our management which is used as a stimulus to our superintendents for efficient and active operation. We get a figure which represents the subdivision of certain expenses and which we cannot say is the real cost. We use it for comparison, year after year, because it is made up on the same basis, and it may be a right way to do it or it may be wrong. Experts differ as to the methods of dividing these indivisible expenses. We arrive at

a figure. But I claim that nobody can testify that that figure was the actual cost of performing a given unit of freight service. We have a figure which, as I say, we use ourselves, a measuring rod.

Q. I want to be perfectly frank with you about this, and if you mean by that that you would not be willing to testify under oath that you know the exact cost of any particular class of service (and I am not speaking now of a pound of sugar, but I am speaking of a class of service), I fully agree with you, but what I want to know is your best judgment as to whether or not it would be possible to ascertain approximately the cost of any particular class of service.

A. Well, I think you could get at an approximate figure, but it would all depend on the theory that you used for subdividing your indivisible expenses. Now, you might say one theory was right and I might say another was.

Q. Oh, of course, that is humanity; but do you not believe, Mr. Elliott, that, by fair and patient effort, you could satisfy yourself as to the actual cost of a particular class of service rendered by the Northern Pacific Railway Company?

A. In a few cases we could.

Q. Could you not, by patient and reasonable effort, satisfy yourself what, in your best judgment, was approximately the cost of each class of service rendered by the Northern Pacific Railway Company?

A. I am very doubtful if I could satisfy myself.

Q. I don't mean now by each class of service as groceries divided into tea and sugar and crackers, but what I mean is, following the classifications which you have adopted for the divisions of freight, do you not believe that, if you made a patient, intelligent effort to arrive at that cost, you could satisfy your own judgment approximately as to what it was as to each class of service?

A. I doubt if I could satisfy myself. I have tried for twen-

ty-five years.

Q. And you have never satisfied yourself approximately?

A. No, sir.

Q. You don't think you could satisfy yourself, even approximately?

A. I could make a guess, but after I have made a guess, why, I wonder if I have guessed on the right basis.

Q. When I use the words "approximately correct," I don't mean correct within one per cent, or, possibly, within ten per cent, but taking that word in its broad, general meaning, could you not satisfy yourself that you had arrived at the approximate cost?

A. Well, I don't know. I have made a great many figures, and we get at, in certain cases, things that would fairly represent the approximate cost of certain classes of service; but where you have a railroad like the Northern Pacific, with a density of traffic of two or three or four hundred thousand tons per road mile and high-speed passenger trains, also, I never have been able to satisfy myself as to what you could say was the cost of the slow freight or the fast freight or the passenger train. I take it on the broad general results. We make all sorts of figures that are *relative*. We can make certain relative figures.

Q. Has not the attempt which is being made, and has been made for the past few years by the Interstate Commerce Commission to arrive at the cost, greatly facilitated the solution of this problem?

A. It may have; I don't know.

Q. Well, has it not resulted in a much more complete division of the various items of expense?

A. Well, we have got a new classification of accounts, only had it one year, and they have a little larger number of accounts than we have; not many more.

Q. Now, let us take the Northern Pacific System: In the

first place, there is the investment. The cost of maintaining that investment, of protecting the property, as a whole, can be ascertained, can it not?

A. Yes, sir.

Q. A proper return upon that investment can be obtained, can it not?

A. We hope so.

Q. Well, now, Mr. Elliott, you know I meant that what would be a proper return could be ascertained.

A. Well, that is what I mean.

Q. You evidently meant the business result?

A. Yes, that is what I supposed you meant.

Q. No, I am speaking of what we could ascertain of what would be a proper return from that.

A. Oh.

Q. Those items could be fixed, could they not?

A. I think so.

Q. The general cost of maintaining equipment, of course, can be ascertained?

A. Yes, sir.

Q. The value of the road in each particular division, whether the divisions which you have established are territorial divisions, can be ascertained with reasonabe accuracy, can it not?

A. Yes, I think it could; it would be rather difficult, perhaps, to allot the value of each division.

Q. The special cost incurred in transporting or moving a train a given distance can be ascertained, can it not?

A. For that particular train, yes.

Q. For that particular train?

A. Yes.

Q. And the general cost for moving trains of that class, or the average cost for moving trains of that class, can be ascertained, can it not?

A. Yes, sir.

Q. So that if you would classify the trains, you could ascertain the direct cost of moving each of those trains?

A. Certain expenses you could, of course, get without difficulty, applied to that particular train.

Q. The difficulty arises in the division of the general expenses, I believe?

A. Do you use general expenses in the sense of the Interstate Commerce Commission classification?

Q. Oh, I mean it in the very broadest sense.

A. In the broadest sense, yes.

Q. The difficulty arises in saying what proportion of the investment should be charged to any particular service?

A. Yes.

Q. What proportion of the general office expenses should be charged to any particular service of the station expenses, and matters of that sort; but the first cost of transportation (that is, the direct cost of moving any particular train or class of trains) can be ascertained just as easily as a grocer can determine what he has paid for so many barrels of sugar?

A. Well, I wouldn't put it quite as broad as that, Mr. O'Brien, because if you took your cost of a given train running from Fargo to Jamestown, for example, and then used that to represent a class, you might find that it was not fair, that there would be certain things would happen the next day to that same train that would have made it cost more or less.

Q. I don't suppose any intelligent person would do that.

A. No; but you were saying if you found out what the average was.

Q. But if you take all of the trains, the direct cost of all of your trains, during a year, from St. Paul to Fargo, you would ascertain what the average was for each of those trains?

A. For that train, yes.

Q. And that could be done with as much accuracy as a grocer could tell what he paid the wholesaler for a barrel of sugar?

A. On those classes of expenses of which we are talking, it could be done accurately.

Q. So that the only problem, or ground for dispute in the matter of cost, is how these general expenses which cannot be allocated should be divided?

A. Well, that would be the great question.

Q. That would be the great question?

A. Correct.

Q. Now, that question is met by every manufacturer and by every merchant, necessarily, if he ascertains the cost of his merchandise, is it not?

A. I have no knowledge of what the merchant does.

Q. But you have a knowledge of what the merchant has. You know that the merchant has insurance to pay upon his stock?

A. Yes, sir.

Q. You know that he has either rent to pay upon his building or the value of his investment in a building; you know that he has a series of clerks who one moment are selling sugar and the next moment may be selling silk?

A. That is right.

Q. You know that he has delivery boys and horses who deliver fish and meat and anything else?

A. Yes.

Q. And you know that the manfacturer has the same thing?

A. That is right, and my impression is, from men in those classes of business with whom I have talked, that they are up against the same problem that we are, and I remember asking a friend of mine that was in the dry-goods business if he knew what it cost him to sell a bolt of cotton cloth, and he said, "No, no way of finding out that he knew of." I asked a lumberman once what it cost him to produce some shingles—miscellaneous lumberman; he said he didn't know, he had to take his entire business. Now, he may have been a poor lumberman and the

other man a poor dry-goods man, I don't know. What does it cost Michaud to handle one box of cigars or one bottle of whiskey? Is he able to find out?

Q. Well, now, if you will—is that a question? Because I am not testifying.

A. I understand, but I am merely illustrating that. I have discussed this with men in mercantile life because it is a big question, it is a very difficult one.

Q. Isn't it the practice, with regard to mercantile men, to fix their prices by a scale of percentages over the direct cost of their articles?

A. I don't know.

Q. You don't know that. Now, supposing you were a merchant and ascertained that your business, your sales and your purchases in a given period amounted to $50,000, that the direct cost, the amount paid out for the purchase of your merchandise, was $40,000 and that $10,000 was required to carry on your business generally, so that the entire cost was $50,000, wouldn't you be able to ascertain how much, what per cent, should be added to the original cost of each article, in order to give a return of five or ten thousand dollars above the general cost of the business?

A. I think I would, but I would not be able to ascertain that it was necessarily fair to add the same percentage to each article. I would arbitrarily add a per cent.

Q. You might arbitrarily add a per cent, and if you did that, and charged to each article the direct cost and charged to it a proportional amount of the general expense, you would know just what it did cost Michaud, if he was the one in the illustration we were taking, to sell a bottle of whiskey or a box of crackers?

A. I don't see how I would.

Q. You don't think that would lead to any conclusion upon that point?

A. No.

Q. It would, however, give him the informtion by which he could adjust the charges as between the different classes of articles so as to treat each customer fairly, wouldn't it?

A. It would give him something to go by so he would try to do so, but if he found he could not sell his goods, he couldn't add the per cent.

Q. But that has nothing to say to the question. It would enable him to adjust those prices, as between the different customers, so that each one would be paying a fair price for his article, would it not?

A. If they were still willing to buy.

Q. His part of it would have been done in that respect. Now, is that the attempt made in the fixing of rates?

A. Well, of course, in fixing rates, ultimate cost is one of the items, but there are countless forces working to make rates.

Q. Is it not true in the matter of rates that where the freight is paid by the large and heavy producer, you generally find low rates, and where the freight is paid by the small and unprotected producer you find the higher rates?

A. I wouldn't want to say that that was the case, because I think the small shipper has exactly as much protection as the big one.

Q. Now, take the case of lumber, for instance, from the Pacific coast. The lumber dealer on the Pacific coast is compelled, if he wants to market his goods in this territory, to meet the competition of lumber produced in this vicinity?

A. Yes, sir.

Q. Is he not?

A. That is right.

Q. And for that reason, has not the rate upon lumber from here to the coast been fixed at a very low sum?

A. Very.

Q. A very low sum; and that is done for the purpose of

enabling the lumberman in Washington to market his product in Minnesota?

A. Correct.

Q. The farmer producing wheat in Minnesota obtains for his product the price of that wheat at Minneapolis, less the freight from where he lives to Minneapolis, does he not?

A. I don't know what he gets.

Q. Well, don't you know that that is the case?

A. I do not.

Q. Don't you know that the price of wheat is fixed in the interior towns at the price in Minneapolis less the freight?

A. I think there are other things taken into consideration.

Q. In the absolute price paid the farmer?

A. The elevator allowance has to be taken out, and so on. The freight is a very important item.

Q. There may be other charges?

A. That is what I meant.

Q. There may be other charges?

A. I couldn't say outright.

Q. Isn't that what fixes the price of wheat?

A. That is a very important element.

Q. The price at Minneapolis less the cost of handling it?

A. Well, that is another thing. You have got other things besides the freight in the cost of handling.

Q. If I have omitted anything, I am very much obliged to you for putting it in.

A. That is why I didn't answer your question directly, because I don't think it is fair to say that the price is fixed absolutely by the freight rate.

Q. Well, I am very glad for your suggestion. I will change that to the "handling" of it—less the handling of it; is that not the case?

A. I think it is. I am not a wheat-buyer. I am not very intimately connected with the wheat business, but, in a general

way, I should say that the price in North Dakota was based quite largely on the Twin Cities and the Duluth price.

Q. Now, the result of that is that, in the case of lumber, the rate upon lumber is fixed by the competition in that product at St. Paul, let us say, or in this territory generally; isn't that true?

A. Quite largely it is true, yes.

Q. In the case of the wheat, the price of the wheat is determined by the cost of handling it, to a great extent?

A. Well, I wouldn't be willing to assent to that.

Q. And neither of the rates in those cases is established by ascertaining the actual cost of the service and adding to that any proportion of the general cost?

A. I would agree to that.

The Master directed the Reporter to attend the hearing before his Honor, Judge Sanborn, at 2 o'clock P. M., with reference to the question of taking up the hearing in the Great Northern case to which reference was made in yesterday's proceedings, and thereupon an adjournment was taken until the morning of Friday, November 20th.

At 2 o'clock P. M., on Thursday, November 19th, 1908, counsel for Complainants in the Northern Pacific and Great Northern cases, Messrs. Jared How, W. R. Begg and H. Holden, and counsel for the Defendants, Attorney-General Young, Thomas D. O'Brien and Edmund S. Durment, appeared before his Honor, W. H. Sanborn, J., at the Federal building and after argument by respective counsel upon the matter submitted relative to the taking of testimony in the Great Northern case, the Court said:

The COURT: There is no question of law in this case. The Complainant in the Great Northern Railway case and the stockholders of the Great Northern Railway Company who have

brought this suit are entited to a hearing and decision in their case as soon as the Court can conveniently reach a time for its decision.

The rule invoked by Mr. O'Brien that, where a jury case is on trial in one court, counsel could not be required to proceed in another court, is not applicable to suits in equity where the testimony is taken before a master or special examiner. While one attorney may be engaged as counsel in one equity case another equity case in which he is counsel may also proceed and testimony be taken, and it is necessary, in most equity suits, that extra counsel shall be employed in the taking of testimony before bringing it to the Court.

The question here is one of convenience, and perhaps one of rapidity of preparation. It is desirable that these cases should be prepared for hearing as soon as possible, and that course of proceeding which will lead to the most speedy hearing is the course which ought to be pursued.

There is one objection to the closing of any typical case and the decision of that case without the hearing of the other cases which has been suggested by Mr. Holden, and that is that a decision of any one of these cases may establish rules for the decision of the other cases which would be established in different form or in a different way if the witnesses in the other cases had explained their views to the Master and the Court before the decision was made. Were it not for that objection, I should have no doubt that the proper course to pursue would be to complete the hearing of the Northern Pacific and the Minneapolis & St. Louis cases and have them submitted and decided before the other cases were brought on for a hearing. But it seems to me that that objection, if insisted upon, is of sufficient weight to prevent that course from being pursued.

Then the question arises as to how the testimony in these various cases shall be taken. In my opinion, the best way to proceed, the most convenient and the most speedy way, the way

in which to reach a hearing most quickly, is to complete the testimony in the Northern Pacific and the Minneapolis & St. Louis cases. When that testimony has been completed, it is possible that counsel will be able to stipulate certain portions of that testimony into the other cases and thus obviate the taking of much testimony in those cases. If they are unable or unwilling to do that after they have examined the evidence in these cases that are completed or practically completed, then proceed to the taking of the testimony in another case. This method of proceeding, however, should not be carried forward if it turns out, upon undertaking to close the Northern Pacific and Minneapolis & St. Louis cases, that for any reason counsel are unable to close those cases and there comes a substantial delay in the work before the Master. If such a delay should occur, if counsel should be unable to proceed and there should be a substantial delay and their evidence might be taken in other cases, then it seems to me that the proper course to pursue is to proceed with the taking of that testimony.

I think it is unnecessary to make any order. What has been said when suggested to the Master is practically to carry out the course which he recommends, as I understand it, and it does away with the setting of the Great Northern case for the 7th of December. Counsel should proceed now to put in the testimony for the Complainant as rapidly as possible and when any day comes that the Complainant's counsel is not able to proceed, the defendant should put in its testimony, so as to occupy the time of the Master and close those two cases as soon as possible. I think you may proceed in that way until the first of the year, and then, if you cannot agree, you may apply to the Court for any orders that may become necessary as to the setting of the other cases. Or, instead of applying to the Court, if you can arrange with the Master, you may proceed to take your testimony.

In conclusion, I may say that it seems to me—although this

is a suggestion and no decision and will not be carried out by any order—that it may be possible, after you have taken the testimony in the Northern Pacific and Minneapolis & St. Louis cases, by arrangement between counsel to obtain a consideration and decision of the first question, the question of whether or not there is an unconstitutional interference with interstate commerce by the acts challenged, before going on with the determination of the other issues. That could be done, I suppose, by stipulation of counsel. Of course the Master, under the order, must proceed to a hearing of the entire case, unless by stipulation some other arrangement is made, and the whole case must come up together to the Court finally.

Now, have you anything further to suggest?

Mr. How: I understand the Court's views to be that the Great Northern Complainants may not hope to get the attention of the Master till both the present pending cases are disposed of, both the Northern Pacific and the Minneapolis & St. Louis?

The Court: Not until the testimony has been taken in those cases, provided there is no delay. If there is a delay, of course, the Great Northern may apply to the Court for an opportunity to be heard; but, in my judgment, you will reach a final conclusion of these cases much sooner if you proceed to put in all the evidence in those two cases first and then take up another case than you will to take the Great Northern case while you are on your way in the other two cases. That is my opinion about it.

Mr. How: I will go as fast as I can.

The Court: I desire to adopt a method which I think will result in the most speedy hearing of the cases.

FEDERAL BUILDING, St. Paul, Minn., November 20, 1908, hearing resumed.

The MASTER: Gentlemen, I understand that the effect of the proceeding before Judge Sanborn yesterday was that the testimony in the two cases which have been before the Master shall be completed before taking up any other case, and I think some suggestion was made that, perhaps by arrangement of counsel, one at least of the legal questions—an important one, perhaps—could be submitted and heard before the Court before the other cases were taken up. Was not that the decision? I do not understand that any order, however, was made, but simply that suggestion.

Mr. O'BRIEN: I understand that the suggestion was that the testimony in the two cases now being tried be closed, unless an occasion for a long delay arose during which neither party would be able to present testimony in these two cases, but that as long as either party was ready to proceed with testimony that testimony should be confined to the two cases now being heard. The judge did not feel at liberty to insist that three of the cases be decided before the testimony was taken in other cases, but suggested that if, when the testimony in these cases was closed that could be done, it would be very acceptable to the Court.

The MASTER: I understand that both the Complainants and Defendants are to submit their testimony, in these two cases, if practicable before taking up any other case?

Mr. HOW: I think there was some intimation on the part of the Court that if the testimony in these two cases was not completed by the first of January, he would consider the matter again.

The MASTER: It has been suggested by the parties that what the Court said in the proceeding before him be made a matter of record in yesterday's proceedings so that we will

know precisely what his views were.

HOWARD ELLIOTT,
recalled for further cross-examination, testified.

By Mr. O'BRIEN:

Q. Mr. Elliott, in the handling of freight or the transportation of passengers, no division is made as between intrastate and interstate business, is there?

A. None whatever.

Q. No separate account is kept by the Railway Company of the different classes of business; that is, between state and interstate?

A. We keep no such account. We make up reports for the different state railroad commissions, where we make a report of the earnings within the state, where the purely local business is credited to that state and where a proportion of the through business is arbitrarily alloted on a mileage basis. I think those are the only accounts that we would have that would at all approximate a division.

Q. Are you able to state the relative cost of transacting state and interstate business?

A. *I* am not, no, sir.

Q. The mere fact of a shipment falling within either one of those classes would not affect its cost, would it?

A. No, I think not.

Q. The cost would depend upon the character of the shipment and the actual services performed in transporting it?

A. Yes.

Q. Now, it is also true, is it not, that the character of interstate business in general is the same as the character of what we call state business?

A. Well, in a broad way, I should say it was. We have the same miscellaneous movement passing over state lines

that we do wholly within state lines.

Q. That is, some of the state business can be transported at the lowest cost, and some of the interstate business is transported at the highest cost?

A. That is right.

Q. As a general proposition, the articles which are carried for long distances and in large quantities are those which are transported at the lowest proportional cost, are they not?

A. I think that is correct.

Q. In the state of Minnesota is it not true that in the purely internal commerce a considerable portion of it falls within the class which can be transported at a low rate?

A. There is quite a large proportion.

Q. And is it not true that a very large proportion of the commerce between Minnesota points and points in Dakota falls within the character of freight which costs the highest amount to transport?

A. I should say not.

Q. Take, for instance, the shipments of merchandise from the Twin Cities to the Dakotas, isn't that made up largely of broken lots?

A. Yes, sir.

Q. Less than carload lots?

A. A good deal of it.

Q. The wheat shipments from Dakota to Minneapolis or the Head of the Lakes are practically of the same character as the wheat shipments from western Minnesota to the Twin Cities and the Head of the Lakes?

A. That is correct.

Q. And it is about as expensive, proportionally, to transport the Dakota wheat as it is the Minnesota wheat?

A. I think so.

Q. That is, you would consider that the cost per car per mile for transporting wheat from the Red River valley in

Minnesota to Duluth or Minneapolis is about the same as transporting a similar car of wheat from any point in Dakota?

A. Yes, sir.

Q. I take it from that, that there is a certain point where you practically reach the highest economy or the lowest cost in a haul per car per mile?

A. I dare say there is.

Q. Is it not true that when you reach a haul of about 100 miles that point is reached?

A. I should say that was rather a low mileage.

Q. Well, would you say 200 miles?

A. After you have had your initial terminal expense and your second terminal expense, why then you might fairly say that as the mileage increased the increment of cost, if it was possible to compute it, would be a good deal the same for each hundred miles; but every time you go through a terminal point you make some additional expense, you can't help it. Of course, for a 200-mile haul the proportion of the terminal expense would be, relatively, much greater than on a 1000-mile haul, although on the 1000-mile haul you would pass through more of these intermediate terminals.

Q. But, aside from the terminal charges, after a haul extends for a distance of somewhere between 100 and 200 miles, you have as economical a service as possible?

A. Well, given the same kind of railroad and the same climatic conditions, your so-called cost would be the same for the third hundred miles, substantially, as for the second hundred, and for the fourth hundred miles as for the third hundred.

Q. So that, instead of making a division of the cost upon an arbitrary basis on the through—or local-haul, in your judgment it would be fairer to consider whether the haul was in excess of 100 miles or below that?

A. Well, that would have a good deal to do with my judgment of such a calculation.

Q. The terms "local" and "through" I understand are so merely relative that they convey no meaning?

A. Well, we discussed that yesterday, and as I understand the use of the word "local" in your question it would be business that originated and terminated on some 100-mile runs. As I understood you yesterday, you called a local shipment—

Q. Well, I spoke of one division on that.

A. Well, I call a hundred mile run one division.

Q. Now, I don't understand why you call a hundred-mile run one division inasmuch as the divisions on your road vary from—

A. Well, I haven't said a hundred miles; I use "a hundred miles" because we try to approximate as closely to a hundred miles as we can in one engine-run. They run from 100 to 140 miles.

Q. Do I understand that when you speak of the divisions of the haul you are referring to the engine-runs of from 100 to 140 miles and not to the general divisions established upon your road?

A. That would be my idea,—that, if you are discussing this so-called cost, given the same physical and climatic conditions, the same density of traffic, the same relation of loaded and empty car mileage, theoretically the increment of cost for the third engine-run would be no greater than the increment of the cost for the second engine-run; you would assume absolutely the same conditions in every way, the same volume of business, the same number of empty cars hauled one mile and the same number of loaded cars.

Q. Well, I am not sure that we altogether understand each other. Let us imagine a shipment for 300 miles and that the physical conditions of the road for the entire distance were practically the same and all of the other elements which you have mentioned were practically the same; now imagine another shipment, beginning at the same point but terminating

at the end of the first 100 miles of the 300 miles; would the cost per car per mile or per train per mile, if they were a similar train, be the same for each shipment?

A. No, sir.

Q. Well now, where would the difference be?

A. In the case of moving the car from one terminal as an originating point, taking it to the next terminal as its terminating point, the terminal handling of the car at the second terminal point and at the originating point would necessarily be a much greater proportion of the total cost of getting from the first terminal point to the second, because when you handle it at the terminal point (and that is its final destination) there is necessarily a great deal more work done, it is switched off to a side-track or it is taken to a freight house, or it is taken around to an industry track. It simply goes through the first terminal, and then goes through the second terminal, and finally gets to the third terminal; the terminal expense at the intermediate terminal point is much less for that car than it would be if it stops there, so your terminal expense, in the sense that I have just used the word in the first case, is distributed over a much larger mileage and your intermediate terminal cannot be considered as large a proportion as if it was the real terminal where the shipment was broken up, distributed to the shipper or set to a side-track or given the terminal work necessary to complete the transaction. A car might start from St. Paul going to Jamestown, if you like, when it got to Staples there would be almost nothing done to it, the inspector would look at it, but if it was all right it would not be changed from one track to another. The same thing would be true at Dilworth, the next point, the inspector would look at it there. When it got to Jamestown, the switch engine would have to take it and move it about and put it in the proper place.

Q. With the exception of the difference to be made by the

terminal charges, would the cost be the same?

A. Well, given all of the conditions that you speak of, exactly the same as to volume of business, the light-engine mileage, grades, weather, everything, why I should say, theoretically, the cost for 150 miles of one engine-run would be the same as the cost of 150 miles of another engine-run. You would have to have exactly the same conditions.

Q. Certainly you would have to have the same conditions, I understand that. Well now, that would not be true so far as a very short haul was concerned, would it, a haul of a few miles?

A. I think not.

Q. So that, so far as the mere length of haul is concerned, aside from terminal charges, you think that when the haul reaches a distance of from 100 to 150 miles, the greatest economy is secured?

A. Under the conditions that you outlined, if everything is absolutely equal—

Q. Yes.

A. —in all physical conditions.

Q. Therefore, if a person were to endeavor to classify the shipments, it would be fairer to classify them by the length of the haul rather than by any arbitrary division established upon the road?

A. I don't think I have got any opinion on that as to whether it would be fair or not.

Q. From what you say, I imagine it is also true that the cost of each service depends upon the particular circumstances surrounding it?

A. That has, naturally, a great deal to do with it.

Q. For instance, take a shipment over the entire length of your road, that is necessarily made up of terminal charges at a great many points upon the road, is it not?

A. Yes.

Q. While a shipment within the state of Minnesota might be for one-tenth of that distance and yet have one-fifth as many terminal charges?

A. Might.

Q. Or, it might be for one-fifth of the distance and have only one-tenth of the terminal charges?

A. Well, I would have to make a calculation to see whether those proportions were right.

Q. Well, I am not speaking of Minnesota, but of what the conditions might be. Therefore the propriety of any schedule cannot be determined by applying it to any other conditions?

A. Well, I don't know why not. You have got to take all of the conditions that surround the management and operation of a railroad in discussing the propriety of any given schedule, all of the commercial conditions, all of the market conditions, how long your cars are idle in one kind of business as compared with another,—

Q. Well, that is hardly an answer. I think you possibly didn't understand exactly what I said.

A. Well, maybe I didn't.

Q. The property of a schedule for business within Minnesota cannot be determined by arbitrarily applying that schedule to your entire line?

A. Why, I think it can.

Q. Well, notwithstanding the fact that conditions are not the same?

A. Why no, but if we make a schedule in Minnesota that is very, very different from the schedule in Dakota, it is only a very short time before we will have to make a different schedule in Dakota.

Q. Well, I was not speaking of Dakota.

A. Well, any other state.

Q. I spoke of your entire line.

A. Well, the entire line, yes, sir.

Q. Do you think that the propriety of a schedule for the state of Minnesota can be determined by applying arbitrarily that schedule to your entire line?

A. I think that would be a very important element to determine the propriety of it.

Q. The conditions are not the same, are they?

A. Not everywhere, no.

Q. In the western part of the road you cross two or three mountain ranges?

A. Yes, sir.

Q. The density of the traffic is not the same?

A. Not in all places, it varies a great deal.

Q. The rate of wages paid is not the same?

A. Substantially the same.

Q. Well, is it absolutely the same?

A. It is absolutely the same on a large number of classes.

Q. But it is not the same on a large number of classes, also?

A. That is right.

Q. For instance, your engineers are paid much higher in the western part of the road, are they not?

A. Only on the mountain divisions.

Q. The cost of construction varies in different parts of the road?

A. Yes, sir.

Q. Well, now, under all those conditions, do you think that any great help can be obtained by arbitrarily applying a schedule intended for one part of the road to the entire road?

A. Why, I think you have got to take the Northern Pacific road as a great business machine, and if you make a schedule in Montana that is radically different from the one you make in Idaho, it is only a question of time before you have got to change your Idaho schedule; if you make a radically different schedule in North Dakota from what you do in Minnesota.

it is only a question of time before you have got to change your Minnesota schedule; if you make a radically different schedule in Minnesota from what you do in North Dakota, it is only a question of time before you have got to change your Dakota schedule; and, all together, you break down your entre fabric of through rates and ruin your railroad.

Q. The result is that the question as to the propriety of the schedule in your mind, does not depend upon the justness of the rate in itself as applied to Minnesota but depends upon its relation to the rates outside of Minnesota and its effect upon it?

A. Depends upon both.

Q. Well, the first has no relation to the second, has it?

A. Yes, sir.

Q. The justness of the rate in Minnesota, then, depends upon the justness of that rate when applied outside of Minnesota?

A. I think so.

Q. So that, finally, the only consideration which you would think ought to be borne in mind would be the effect of the rates upon the System as a whole?

A. That would be one of the very important elements.

Q. Well, isn't it the sole element?

A. I think not.

Q. Didn't you just say—

A. I said both of them were important.

Q. I know, but didn't you just say that the justness of the rate in Minnesota would depend, in your judgment, upon the propriety of that rate in force outside of Minnesota?

A. Well, I may have said that. What I mean is the rate in Minnesota, if unjust, would very soon bring about unjust rates in other states and would break down our entire fabric of through rates.

Q. Yes, but whether it was just or not in Minnesota would

be determined in your mind as to what its effect would be outside of Minnesota?

A. Partly, and also as to its effect in Minnesota; but if I were going to decide it I would take both things into consideration. I would use the railroad as a great commercial enterprise, you can't break it up into little pieces.

Q. Of course nobody thinks otherwise than that it would be a calamity if the Northern Pacific were broken up into little pieces. What I am endeavoring to ascertain, Mr. Elliott, is your best judgment upon this question and upon what ground you base your judgment. I take it that you are here testifying in this case because you believe these rates to be unjust—

A. Yes, sir.

Q. Now, have you come to that conclusion because of the cost of the service required in Minnesota and the profit or return which these rates will actually allow you for that service, or have you come to that conclusion because of the possible effect which these rates will have upon the property outside of Minnesota?

A. My judgment, Mr. O'Brien, after my experience in railroad management and operation, and after my experience on the Northern Pacific for five years, is that the rates that are now under discussion are unjust and nonremunerative on the local business in Minnesota, and they are very, very unjust in their probable effect on other rates in which Minnesota has no interest; I think they are unfair and unjust on both grounds.

Q. Well, is that conclusion that you have come to as to their being unjust as applied to Minnesota traffic, based upon their effect upon traffic outside of Minnesota?

A. Partly. As I just stated—

Q. But only partly?

A. I think if we had no other business and were doing our Minnesota business on these rates they would be unjust, if

our railroad stopped within the state of Minnesota.

Q. Now, of course, when you say your judgment is based upon the facts which you have ascertained—

A. It is based on my business experience.

Q. Then you have a judgment as to what the cost of the service is in Minnesota?

A. I have a general judgment as to what the outcome of railroad operations would be in total if we had to do it on these rates. I could not give you an honest statement as to what it cost to haul a car of coal or a ton of flour; my judgment would be that, by and large, take our enterprise and saw it off at the Red river and let us do the business in Minnesota on the rates in question, we couldn't live, we would go into the hands of the sheriff in a short time.

Q. And you have been of that opinion ever since these rates were established?

A. Before they were established.

Q. Since before they were established?

A. Yes.

Q. Did you at that time know the amount of the revenue produced by the old rates from this class of business?

A. I did not.

Q. Did you when you came to that conclusion know the amount of reduction that would be made if these rates were in force?

A. I did not.

Q. Had you ever ascertained, by any means, the cost of the service performed in order to earn these rates?

A. Only, as I say, my general business experience.

Q. Then it is a mere general conclusion that you came to, not based upon any detailed facts connected with it?

A. Based upon my judgment of having been in the business here and in Iowa and Missouri for a long time.

Q. And in coming to that conclusion the question as to

whether or not the rates were just, in and of themselves, as applied to the traffic in Minnesota, was only one of the matters you took into consideration?

A. That was one of them, yes.

Q. The principal reason that you considered the rates as being insufficient was because of your judgment as to the effect that the rates would have upon the road generally?

A. That was a much more potent reason, because it seemed to me that it would ruin the railroad that I was put in charge of.

Q. Wasn't it the controlling reason?

A. I think not.

Q. But it was the most potent reason?

A. Yes.

Q. And that reason, of course, has nothing to say to the question as to whether or not the rates are just in and of themselves?

A. Well, they both go together, it seems to me. If the Minnesota rates were so high, for example, they had no effect on the through rates, that question would not arise.

Q. Now, if, under similar conditions, the highest economy is reached when a haul extends a distance of 150 miles, will you explain why you voluntarily established a rate on lumber from coast points to Minnesota of about four mills per ton per mile and still claim that the rate in Minnesota upon lumber for a haul of 150 miles at more than 12 mills per ton per mile is confiscatory?

A. I can't admit that 150 miles is the highest economical limit for the Northern Pacific System and will not admit it.

Q. Is it not true that the rates fixed in this schedule for Minnesota business upon the commodities of wheat, lumber, cattle, for a haul of that length, are much higher than the rates received on trans-continental business?

A. Yes, sir, in some cases.

Q. The coal rate is three or four times as high as the rate received by the Northern Pacific Railway Company from the Milwaukee road for hauling coal from Duluth to St. Paul, is it not?

A. I think not.

Q. Do you know what the rate is under the contract between the Northern Pacific and the Milwaukee for transporting coal from the Head of the Lakes to St. Paul?

A. I haven't it in mind now.

Q. It is 40 cents a ton, is it not, for soft coal?

A. I don't know.

Q. The rate allowed by Chapter 232 is something over 90 cents per ton, is it not?

A. I think it is; that is my recollection.

Q. It is somewhat higher than the commercial rate established voluntarily by the roads, is it not?

A. I think in the case of the movement of coal in large blocks between Duluth and Superior and Minneapolis and St. Paul the rate of the railroads is either the same or a trifle less than the rate you speak of, but I have not looked at these rates for a year, I think; I can't give absolute testimony as to the figures.

Q. Most of the coal consumed in Minnesota comes here by way of the lakes, does it not?

A. I couldn't give you the proportions. In southern Minnesota there is a large amount of coal comes from Iowa and Illinois, so I couldn't tell you whether the most of it comes from the Head of the Lakes or not; a great deal comes from the Head of the Lakes.

Q. Do you consider that the rates upon coal from Duluth to interior points in the state should be fixed with reference to the cost and value of that particular service, or with reference to the general conditions upon the line of the Northern Pacific Railway Company?

A. Well, Mr. O'Brien, my judgment about rates is that what you call the cost theory is one of the elements in making rates, but it is not the only one. There are a great many other elements, just as there are in the making of any price.

Q. That is true, but the basic element would be the cost, would it not?

A. The basic element, ultimately, would be that the total cost of operating the railroad must be paid by the total freight charges and passenger charges paid to the railroad, otherwise, nobody would go into the business.

Q. Well, you know Judge Brewer decided, a great many years ago, that the principle of robbing Peter to pay Paul had not yet been adopted by the federal courts; and so the first matter to establish would be the cost of the service, would it not?

A. I don't know how you can do it..

Q. If it could be done it would be the first matter, would it not?

A. If it could be done it would be a very desirable thing for railroad owners and railroad users to have.

Q. If the cost could be established, the first great element in ascertaning what was a fair rate would be fixed, wouldn't it?

A. Well, it would be a very important element.

Q. If the cost could be approximately established, it would be a very important element?

A. It would be helpful, yes.

Q. Mr. Elliott, the Railroad and Warehouse Commission of this state made an order establishing rates upon merchandise which went into effect November 15, 1906, if you remember.

A. I knew they made an order, I couldn't tell you the date.

Q. Subsequently, in the month of December, 1906, the Commission made an order establishing rates upon commodi-

ties upon the plan followed by Chapter 232 of the laws of 1907, but the rates prescribed by the schedules fixed by the Commission were somewhat less than the rates prescribed by Chapter 232; is that the case?

A. I don't know. I am not familiar with the chapters or the details in that way, I would have to look it up.

Q. Well, Chapter 232 covers the commodity rates. You remember the Commission did make an order fixing commodity rates?

A. Yes.

Q. And the Northern Pacific Railway Company, in or about the month of January, 1907, commenced an action to enjoin the enforcement of those commodity rates?

A. Yes, sir.

Q. The merchandise rates had been put in operation by the voluntary action of the Road on November 15, 1906?

A. They were put in, and if you say that is the date I know it must be the date.

Q. It was about that time?

A. Yes.

Q. In the action commenced by the Northern Pacific Railway Company in January no claim was made that the merchandise rates were confiscatory, I believe?

A. That is right.

Q. And no attempt was made by any person to challenge those rates in Court until after the legislature, in April, 1907, reduced the passenger rate and established the commodity rates?

A. I believe that is the case.

Q Is it not true that if the legislature had not reduced the passenger rate, no attempt would have ever been made to interfere with the merchandise rates fixed by the Commission?

A. Well, you are assuming, of course, a condition that don't exist. My judgment as an officer charged with the re-

sponsibility of trying to care for the Northern Pacific would have led me to urge that we test them.

Q. Did you?

A. Did I urge—

Q. Did you attempt to test them?

A. No, we did not until we got into this condition where there were so many attacks upon our rates that it seemed absolutely necessary to resist. We felt they were wrong but we suffered and let it go.

Q. You not only put in the merchandise rates established by the Commission by its order, but at the request of St. Paul and Minneapolis jobbers, you voluntarily reduced your merchandise rates into Dakota to about the same scale, did you not?

A. I couldn't tell you that detail, Mr. O'Brien; I am not today personally informed as to just how we made the Dakota rates.

Q. You know that there was a reduction made in the Dakota rate?

A. I couldn't testify today as to that.

Q. Then it is not within your knowledge that the rates from the Twin Cities as far west as Bismarck have been adjusted voluntarily by your Company on the basis of the rates fixed by the Commission in its order of September 6, 1906?

A. I know some adjustments have been made.

Q. You know that some adjustment has been made?

A. But I couldn't tell you just what they are. I know there is a complaint up about them now, I believe the St. Paul jobbers are claiming there should be a further reduction in to North Dakota points because of some of the Minnesota rates.

Q. Do you make the same claim on behalf of your road with regard to the merchandise rates that you do with regard to those rates, taking them as a whole, that their enforcement would result in such an alteration and change of rates that

you would be "in the hands of the sheriff," I think you said,—I hope I will never see you there.

A. Well, I think, Mr. O'Brien, that the effect of the merchandise rates, in the long run, would be very, very bad for our earning power and will affect the rates on similar freight in other states and affect the through rates.

Q. What I asked you was whether or not you made the same claim with regard to these rates that you do with regard to the enforcement of all three—the commodity, the passenger and the merchandise.

A. I think this: that we might suffer the loss of one class of business and still survive if we were making money on others,—something like the story of The Old Gray Mare and the Fiddler. I don't know whether you know that.

Q. Well, I don't know whether the Circuit Court cares to hear it.

Mr. DURMENT: Let's have his story.

WITNESS: Why, the fiddler came to the old gray mare in the stable and said he had broken a fiddle-string and he wanted to get a hair out of her tail to make a fiddle-string with, and could he have one? And she thought that was a modest request and said, "All right, take one." So he yanked one out and fixed up his fiddle. A day or two later he came around again and said he wanted another one. She said, "That won't do any harm," and gave him another one. Well, after a while the fiddler kept coming and pulling out these gray hairs and finally pulled them all out and the poor mare had nothing but the stump of a tail left, so the flies got at her and she couldn't keep them off and they bit her so badly that she got blood-poisoning and died. Well now, the State of Minnesota first pulled one hair out of our tail, the merchandise rates, and another hair out of our tail, the commodity rates, and another hair out of our tail, the two-cent a mile rate, and we are getting along to the condition where we are like the old mare!

Mr. DURMENT: Where you can't keep the flies off, eh?

(Everybody laughs.)

WITNESS: It is a cumulative business.

Q. Do you make the same claim, and is your judgment the same in so far as the merchandise rates are concerned as you do with regard to these three schedules as a whole?

A. Well, I don't know how I can answer that any better than I have. I think the merchandise rates are unjust and that we lose money on them and that their effect would be bad. Whether we would go into the hands of the sheriff if those rates were maintained and no other changes were made, I don't know. I don't think they are fair rates.

Q. Is your judgment upon those rates different now than it was at the time you advised their acceptance by the officers of the road—

A. I didn't—

Q. —and promulgated them?

A. I didn't advise their acceptance, but conditions were such that it seemed necessary for us to put them in as other roads were going to put them in.

Q. Is your judgment with reference to those rates different now from what it was at the time those rates were promulgated by the other roads?

A. No, sir.

Q. It is the same. And if it were not for the fact that you were going to have a law-suit anyway and that you might as well include all of the "hairs" you wouldn't have advised the bringing of any action for this particular "hair"?

A. I might not have.

Q. Now you haven't lost any money on the passenger rates, have you?

A. Yes, sir.

Q. Your passenger rates have not been reduced?

A. Very much.

Q. Have your passenger receipts in the past year been less than they were the previous years?

A. Yes.

Q. Did you receive, upon an average, more than two cents per mile from all your passengers?

A. Yes, sir.

Q. What was the average for passengers?

A. Well, I can give it to you by referring to the report; it is something over two cents a mile; I don't remember the exact amount.

Q. A very small fraction, wasn't it?

A. 2.23, something of that sort.

Q. That was in what year?

A. The year ending June 30, 1908.

Q. That was the year ending last June?

A. Yes, sir.

Q. What were your receipts from passengers per mile in Minnesota during the year ending June 30, 1907?

A. I haven't the figures in mind.

Q. Was it more than 2 cents per mile?

A. I think it was.

Q. You are not sure about that?

A. No.

Q. Is not the chief objection which you have to the passenger rates the fact that it prevents the putting in of a special rate when you see fit to such occasions as the state fair or some large convention, that it destroys some of the flexibility of the rates?

A. No, sir.

Q. It is on the question of revenue exclusively?

A. Yes, sir.

Q. But you don't know whether you received more than 2 cents per mile in Minnesota during the year ending June 30, 1907?

A. I think we did, but I have not prepared to give absolute testimony; I would want to refer to the report.

Q. You could hardly come to a strong judgment as to whether or not these rates were confiscatory as applied to the state of Minnesota unless you knew whether you received more than 2 cents per mile in the state, could you?

A. Well, you are referring to the local business in the state of Minnesota or to all of the business handled by the Company in Minnesota. We received very much more than 2 cents a mile on local business in Minnesota, but we were transporting a very large amount of laborers and colonists for construction and development of the western country, and those rates were low not because they were remunerative but simply to help build up the country. When you average those up it may be that the rate was pulled down but it was not below two cents, even taking that.

Q. It probably was about two cents, although I haven't the figures in mind. Well, now, if, as a matter of fact, your old rates produced about two cents per mile, it becomes a matter as to whether your discretion in the issuance of mileage tickets, in the granting of half-rates to clergymen, in attending excursions to occasions like the state fair or conventions, in transporting emigrants and laborers at a less cost and charging the ordinary traveler three cents per mile, should control, or whether the discretion of the legislature putting all classes upon an equality should control, does it not?

A. Well, it apparently has resolved itself into that condition.

Q. And what you insist upon is that you should judge of the propriety of those rates and not the legislature?

A. I think the owners of the property ought to have a voice in making the prices for the use of their property.

Q. You don't think that the question of public policy

should enter into it or be controlling?

A. I think it should enter into it and be very largely controlling—and it does—every sensible railroad man considers it every day and every hour in the day.

Q. Now, if the merchandise rates were of a character which justified you in adopting them voluntarily and the passenger rates become a question of public policy and as to who should control, and if the question of revenue is eliminated, the question of confiscation, so far as these rates are concerned, depends upon the commodity rates as established by the legislature upon the 18th of April, 1907?

A. I don't think so.

Q. And it was the establishment or passage of that law which precipitated the litigation we are now laboring under?

A. Yes, sir.

Q. Mr. Elliott, I understand from your testimony, and if I may be permitted to say so, I very heartily agree with you, that the Northern Pacific is an especially well-located road for the territory over which it passes. Is that true?

A. I think so.

Q. Its roadbed is in excellent condition?

A. The majority of it very good.

Q. Its grades, considering the topography of the country traversed by it, are exceptionally low?

A. They are very well adjusted now to the country.

Q. Its equipment is entirely complete?

A. Yes, sir.

Q. An *esprit de corps* has been established among the officers and men which has resulted in most efficient service?

A. Well, we have tried to serve the public in our officers and men and we think we have got a pretty fair organization.

Q. The road is, therefore, at this time, prepared to furnish this service at a minimum of cost?

A. Well, we are prepared to furnish it better than we were

five years ago.

Q. Eliminating the question of the interest upon the bonds and dividends upon the stock, this road is prepared to furnish the public service at a minimum of cost, is it not?

A. Well, what do you compare with? I don't know that I understand just what you mean by minimum of cost.

Q. What I mean is that all of these excellent features, all of this careful management, all of this complete equipment, goes to enable you to serve the public at the most reasonable cost possible.

A. Well, it enables us to serve the public at a more reasonable cost than if we hadn't got that, but when you say "minimum cost" I don't know what your figure is, what you are comparing with.

Q. Well, I don't want to play upon words with you, or anything of that sort, but what I mean is that all of these things enable you to furnish service at a reasonable cost.

A. Yes, it all goes to help.

Q. It all goes to help, the outlay?

A. All goes to give efficient, economical, prompt and safe transportation.

Q. Do you know of any railway system that is in a position to furnish a cheaper service?

A. Yes, sir.

Q. A service at a less cost?

A. Yes, sir.

Q. Is there any such railway west of the Mississippi river?

A. Yes, sir.

Q. What road?

A. The Union Pacific.

Q. With that exception you know of no other road west of the Mississippi river?

A. Well, the Great Northern is able, apparently, to do business at times more economically than we are, some kinds

of business.

Q. Do you know of any other road?

A. No, I think, take those three, we claim we are in the lead on efficient operation.

Q. In addition to this, the Northern Pacific has many sources of income, has it not?

A. Quite a number.

Q. For instance, the right-of-way of the Northern Pacific is how wide?

A. On the old main line, where the charter was received from the federal government, it is four hundred feet wide; on the balance of the road it was from fifty to one hundred or two hundred feet wide.

Q. Is that a larger right-of-way than is found upon any other road?

A. Probably it is. I am not advised as to all the other railroads.

Q. By how much?

A. Well, ordinarily, a railroad gets, in level country, one hundred feet of right-of-way, and in hilly country where there are big cuts and fills, it has to get more.

Q. This right-of-way of the Northern Pacific is at least twice as much as is actually required for the transaction of its railway business, is it not?

A. In places it is, yes.

Q. Taking it as a general proposition? Of course, I am not speaking now of the terminals in cities, but what we consider the ordinary right-of-way, is it not at least twice as wide?

A. Well, the four hundred feet right-of-way is twice as large.

Q. You don't know what proportion of the right-of-way is four hundred feet wide?

A. Well, substantially two thousand miles out of the six

thousand.

Q. That right-of-way was granted by the United States government?

A. I so understand.

Q. Now, the surplus of that right-of-way has been utilized by leasing it to various industries?

A. A part of it.

Q. A great deal of it?

A. Well, I wouldn't say that; a very limited portion of it.

Q. I mean in the communities where industries are situated.

A. Oh, well, yes.

Q. And in some instances it is occupied by commercial houses?

A. Yes, sir.

Q. And wholesale stores?

A. Yes, sir.

Q. In other instances by mills and elevators?

A. That is right.

Q. And you gave, the other day, the number of those industries, quite a large number. The result of establishing those industries upon the right-of-way under lease, I understood you to say secures considerable traffic to the railway Company?

A. Yes, it is natural, if a man is located on your ground that rates and service being equal, he will give you his business.

Q. Are those leases made for a nominal rent or is there a substantial rental obtained by the road from those leases?

A. We endeavor to make our lease basis pay about five per cent and taxes on a fair valuation of the property, but there are a number of places where the general situation is such that our property would lie idle if we insisted upon that basis because others are willing to rent for less; but I don't

know of a case where we give the property away, we get rental and we get taxes out of it, if there are taxes assessed; in some cases there are no taxes assessed.

Q. Could you say whether or not, upon the average, you obtain four per cent upon the value of the property and the taxes?

A. I wouldn't want to say, off-hand, Mr. O'Brien, as to that; that is something I never have looked up.

Q. That additional right-of-way is of great benefit to the road aside from the rentals obtained, of course?

A. Why, yes.

Q. Do you think that in estimating the return to which the owners of the property are entitled, the value of the lands so occupied, and the additional right-of-way which this Company has received under grant from the government, should be included?

A. I do, yes.

Q. You don't think that it would be proper to consider what would be a fair dividend upon the par value of the stock, because the actual value of your property is much more than that?

A. I think we ought to have a fair return on the entire value of our property.

Q. So that in estimating what fair return should be made, this leased property, granted to the Company by the government, upon which you obtain a revenue, in your judgment should be included and another revenue obtained from it through rates?

A. No, I didn't say that. I say we should obtain a fair return on the entire value of our property.

Q. Well, don't you think that, in estimating the value of your property upon which your return should be paid, this property which never cost you anything, and which is now paying a revenue through rentals, and which, in addition to

that, is adding to your revenues from freight, should fairly be eliminated in a computation between the road and the public?

A. I think the fact that it did not cost us anything has nothing whatever to do with the case. It was, as I understand it, given to the promoters of the Northern Pacific to induce them to go into the business of building a railroad. Now, if they are fortunate enough to have this property and it has increased in value, that is their good luck and they are entitled to get a return upon it.

Q. In other words,—and I am trying simply to get at your attitude—in other words, you consider this purely from the standpoint of a business enterprise, the property which the Company has, has been lawfully acquired and that you have a right to so use it as to obtain the best results for the stockholders?

A. That is my theory of railroad management,—and in trying to get the best return for the stockholders a sound business policy will always induce you to make reasonable rates.

Q. But the necessity for reasonable rates arises from the desire to pay dividends upon the stock?

A. That is one element, of course.

Q. The question as to whether or not a public concession was granted to the road, as to whether or not private individuals invested their money in a public-service corporation undertaking to perform a governmental function and maintain a public highway, does not enter into your calculations at all?

A. It enters into them, Mr. O'Brien, to the extent that I say the best welfare of the Northern Pacific Company, or any other company, will come by so managing it that you will develop the largest possible business and the greatest population along the line of your road. Naturally you could only do that by so building up your business and so adjusting your methods as to attract that population and business. You

have got to take the public into account, *of course,*—do take them in—try to induce exchange of commodities between different sections.

Q. You yesterday presented certain computations accounting for the surplus shown in the general balance-sheet.

A. Well, accounting for an item that we call profit and loss.

Q. Yes, accounting for the item of fifty-two million dollars plus.

A. Yes, sir.

Q. In doing that you made a statement that the owners of the property had contributed a certain amount, my recollection is that you spoke of four hundred and thirty millions.

A. I don't know that I used that figure, I stated that the capital liabilities which represented the total bonds and stocks and the subscriptions to the new stock, added up to five hundred and thirteen millions.

Q. Well, did you not say that that sum represented the contribution from the bondholders and the stockholders?

A. It is what is shown on our balance-sheet as having been obtained by the issue of securities.

Q. If, as a matter of fact, the actual sum contributed by the bondholders and the stockholders was $279,811,715.92, your computation would not be correct, would it?

A. I think our computation is absolutely correct.

Q. Based upon the assumption that the first statement made by you, that the contribution from the bondholders and the stockholders amounted to five hundred and thirteen million?

A. It is based upon the assumption,—and the only facts I have is the balance-sheet of the Company.

Q. Assuming the correctness of the balance-sheet in that respect you say that your computation is correct?

A. Yes, sir.

Q. Now, assuming that my statement is correct, that the

actual investment of cash in bonds and stocks now in the Northern Pacific Railway Company and remaining there, amounts to $279,811,715.92, your conclusions would be incorrect, would they not?

A. Well, I don't know how you get at the figures. I don't see how I can answer your question very well; it is an assumption of a conditon that does not exist.

The MASTER: Assuming that it does, Mr. Elliott, that is the point.

WITNESS: Well, then, repeat the question again, please.

The Reporter then read the last question.

WITNESS: My conclusion as to what?

Q. As to the amount of surplus and as to the effect of the surplus and as to the basis upon which a return to the owners of the property should be calculated.

Mr. HOW: You are talking about the contribution of the present stockholders and the original stockholders before reorganization?

Mr. O'BRIEN: Well, Mr. How, you know what I am talking about.

Mr. HOW: I know I do, and I think the question is highly misleading.

Mr. O'BRIEN: You know that Mr. Gray and ourselves have agreed that the total amount of private funds invested and remaining invested in the Northern Pacific Railway Company is the amount I have stated; and Mr. Elliott has assumed (innocently, no doubt,) in his testimony that the amount of that contribution is five hundred and thirteen millions.

Mr. HOW: Mr. Elliott is talking about the present stockholders and the present balance-sheet, and you are talking about the original investments of people which have been wiped out long ago, and I think the queston is misleading. I think the witness ought to be permitted to understand just what your figures are, you are not talking about the same

thing at all.

Mr. O'BRIEN: Did any of the owners of the common stock, issued and reissued at the time of the re-organization, pay par for it, to the Company or anybody else?

Mr. HOW: I think they did.

Mr. DURMENT: On Mr. How's theory, the amount invested would be considerably less than—

Mr. O'BRIEN: Your testimony is that they paid fifteen dollars a share for it.

Mr. HOW: They paid fifteen dollars a share in cash and surrendered securities for the balance.

Mr. O'BRIEN: They surrendered nothing but common stock for which they paid nothing.

Mr. HOW: That is a statement which I do not agree with in fact or in law. All I am anxious about is that the witness shall not be mislead by the question. I am perfectly willing, of course, that the facts shall be testified to, but I want no misleading.

Mr. O'BRIEN: If we can succeed, the facts will be testified to in this case whether you are willing or not, so your willingness in that respect is highly immaterial.

Mr. HOW: Well, I intended to be gracious but I don't seem to be met with the same spirit.

The MASTER: Well, gentlemen, proceed with the examination.

Mr. HOW: I think the Master understands that I do not want the witness to be mislead. I think it is my duty to protect him if the question is misleading.

Mr. O'BRIEN: Make your objection. That is the best thing to do.

The MASTER: Proceed.

The last question was here read to the witness.

WITNESS: Well, of course, you gentlemen all understand, I presume, a balance-sheet. It is obvious that if you reduce

the debit side of this balance-sheet to the figures suggested by you, you would have to increase some item on the credit side. Now, as to the return on the property, I claim, as I said before, that the owners of the Northern Pacific property, as it stands to-day, regardless of the past, are entitled to a fair and reasonable return on the present fair capitalization, fair value, of that property, whether there is one dollar of stock issued against it or a billion.

The MASTER: Wholly independent of its capitalization as represented by the stocks and bonds?

WITNESS: Absolutely independent. We might have a capital of only ten million dollars; in that case we would be paying fifty or sixty per cent—

Q. In this surplus or profit-and-loss account, credit is given for the property of the Northwestern Improvement Company for how much?

A. The Northwestern Improvement Company is carrying on this balance-sheet among the treasury securities, assets, that might be disposed of, at the will of the owners of the property, at nine million seven hundred and seventy-five thousand dollars.

Q. At the date of that balance-sheet, what did the assets of the Northwestern Improvement Company actually amount to?

A. Well, I can submit to you the balance-sheet of that company.

Q. Yes, if you have that with you.

A. If it is desired and I am so directed to do.

Mr. DURMENT: I thought you said yesterday you would produce it this morning.

WITNESS: Well, I have it here.

Mr. HOW: He did say so and he has it; he will produce it if it is asked for.

Witness here produced a paper which was subsequently

marked for identification "Defendants' Exhibit NN—Elliott."

Q. The fund maintained by the Northern Pacific Railway Company for insurance, amounting to some six millions plus—

A. Five, to-day.

Q. You say that is invested in the bonds of the Northern Pacific Railway Company?

A. Well, in various bonds. I think we have some C. B. & Q. bonds and some St. Paul & Duluth bonds; we have tried to invest it in what you would call savings-bank securities.

Q. What proportion of that fund is invested in Northern Pacific bonds?

A. Well, I can give you a statement of that this afternoon; I don't believe I have it here. I will look and see. (Witness examines papers.) Yes, I can give you the figures now if you would like to have them. Well, I beg your pardon, that is as of date December 31, 1907; I haven't the figures to-day.

Q. Well, that will do.

A. We had on that date $1,068,500 of general lien bonds, $94,000 prior lien bonds, $10,000 St. Paul & Duluth division bonds, $6,000 Washington Central bonds, $1,304,000 C. B. & Q. joint fours.

Q. The Washington Central is part of the Northern Pacific System?

A. Yes, sir.

Q. And the C. B. & Q. joint fours you speak of, were the bonds that were issued by the Great Northern and Northern Pacific for the purchase of that road?

A. That is correct.

Q. And all of the bonds that you have mentioned, in one way and another form part of the interest-bearing securities of the Northern Pacific road, in whole or in part?

A. Well, yes, if you consider the C. B. & Q. joint fours in that class.

Q. And enter into what you have described as the capital-

ization of the Company?

A. Yes, sir.

Recess until 2 P. M.

AFTERNOON SESSION.

Q. Is it not true, Mr. Elliott, that the very large proportion of the heavy freight and carload lots transported in the state of North Dakota constitutes interstate commerce?

A. Yes, I should say a very considerable proportion was interstate business.

Q. There are no large terminals in North Dakota, are there?

A. Well, there are no large terminals in the sense that the Twin Cities and the Head of the Lakes are large terminals. Fargo is quite a substantial terminal.

Q. There are no large milling industries?

A. Nothing like the Minneapolis mills. There are a number of pretty good mills at Valley City and Jamestown. They are not very large.

Q. So that a very large proportion of the freight which originates and terminates in North Dakota, consists of broken lots and less than carload lots?

A. I don't know that I would understand what you describe as "broken lots."

Q. Well, less than carload lots.

A. Well, there is quite a large lignite coal movement in North Dakota, that originates and terminates within the state. There is quite a large wheat movement locally, and I could not say that the tonnage of the less than carload lot business originating and terminating in North Dakota exceeded the tonnage of carload articles originating and terminating in North Dakota.

Q. Were you the President of the Northern Pacific Railway Company at the time of the trial of the rate case known as

the Keyes case and reported in the 91st Federal, before Judge Amidon?

A. Is that what was generally called the North Dakota rate case?

Q. I think so, yes.

A. No, sir, I was not President then.

Q. You are not aware, then, as to whether or not it was found as a fact by Judge Amidon that the very great proportion of the purely intrastate business was less than carload lots?

A. I have no advice on the subject of what was in that.

Q. You are not able to say at this time as to what proportion the business internal to Minnesota in carload lots would bear to the entire Minnesota business, or what proportion that business would bear to the Dakota business?

A. No; all I could do would be to make a guess.

Q. In the absence of an analysis of those conditions, it would be impossible to determine the propriety of a rate in either state by the rate maintained in the other state, would it not?

A. Well, that goes back to the same general question, that we would make up our minds about the propriety of the rate by considering all the circumstances surrounding the problem.

Q. And the final inquiry must always be the justness of the rate in itself as applied to the traffic which it covers?

A. Why, yes; I think that is the way we try to make all of our rates.

Q. It is true, is it not, that the rates maintained by the Northern Pacific Railway Company, as well as the rates maintained by every other railway company, vary in different localities?

A. Yes, they vary, more or less.

Q. The rates vary because of all of the matters of which we have spoken here?

A. Yes, I think that is a fair statement.

Q. And in no instance would it be fair to apply, as a final test to any rate, the question as to whether or not it fitted into another situation or agreed with another rate governing a different state of affairs?

A. Well, I wouldn't say it should be a final test, but under the Interstate Commerce law, of course, we have to look out for discrimination as between localities—

Q. Certainly.

A. —so we must take into consideration, in judging of rates, what their effect is going to be on localities that, under the law, we are bound to serve without unjust discrimination.

Q. Now, you have referred there to "unjust discrimination." A rate which is just in itself cannot be unjust discrimination as against any other locality, can it?

A. It might, yes, if we had a higher rate in the other locality.

Q. Notwithstanding the fact that the rate was just in itself?

A. I think so.

Q. Then your idea is that two rates, each of which was just in itself as applied to the particular circumstances, might constitute discrimination?

A. Barely possible it would, yes.

Q. And unjust discrimination?

A. Yes.

Q. If that is not the law, then the mere comparison of those rates would not be a proper test, would it?

A. I presume it would not, if it was not the law.

Q. Well, can you explain how a difference in rates, where each rate is just in itself, as applied to the traffic covered by it, can constitute unjust discrimination?

A. Well, I think I could think up some examples; I don't know that I can, right this minute.

Q. I ask you this, Mr. Elliott, because it has always seemed to me that the final test to be applied under not only the decisions but under practical common sense and fairness, was the fairness and justness of a rate in itself.

A. Well, I will have to admit that has a great deal to do with it, of course; a great deal to do with it. But we might make—Here is a case in point: We might make a rate at the time of a great calamity to help out a community that would be fair and just considering those circumstances—

Q. Yes.

A. —and yet it would not be a proper rate to be used for all other conditions. It has very often been done. In fact, we have been asked to do it, I think, since I have been here, at times, by both the Commerce Commission and some of the state commissions, to reduce our rates in order to help out communities that were in difficulty. Now, it was fair and just, on grounds of public policy, to make those rates, under those conditions, but was not fair and just to base all other rates on them.

Q. Well, under the conditions described by you, it does seem to me that that might be considered an exception to the rule.

A. That is what I say. There are all kinds of conditions come up with a great, big, complicated business. What is fair and just to one place is not fair and just to another, and, another thing that is fair and just in that place is not fair and just in the first place, and if you add those two fair and just rates under peculiar circumstances together, they might reduce your through rate, and yet the through rate in itself is fair and just.

Q. You said that if the rates under discussion in this case were to be enforced and the Railway Company cut off at the state boundary, they would be unremunerative. Did you mean by that to consider the road equipped as it is at present,

or were you considering a road equipped to transact only that amount of business?

A. Well, I was considering our railroad in Minnesota as equipped thoroughly well for Minnesota.

Q. Well, were you considering it equipped as it is at present in Minnesota?

A. Yes.

Q. Well, of course, the equipment in Minnesota is the necessary equipment of a large transcontinental road?

A. Well, part of it is, of course.

Q. The terminals and stations, double tracks, all of those matters, you have never considered these rates or the sufficiency of these rates upon a road constructed to transact only that amount of business?

A. I certainly have not. I don't believe the state of Minnesota wants to go twenty-five years backwards and have a fourth-class railroad.

Q. And yet all of your development and equipment which is unnecessary for the transaction of that business should be maintained and provided for by the other business your road transacts, should it not?

A. It does provide for any part of the business that people in Minnesota do but which crosses state lines.

Q. So that in order to apply these rates, to determine the justness of these rates, they must be considered with reference to only that part of your road and equipment which would be required to transact only that part of your entire business?

A. I don't think so.

Q. You would not agree on that?

A. No, sir.

Q. In speaking this morning of the buildings constructed on your right-of-way under leases, I omitted to ask you whether in any case the Railway owned any of those buildings, or any number of them.

A. Well, I think we own one or two wool warehouses, which are much the same as a freight warehouse, but no substantial number.

Q. But no substantial value in the building?

A. No, I think not.

Mr. DURMENT: There is one question about this matter of rates, that I haven't got clear in my mind, I would like to ask Mr. Elliott, if I may, at this time, Mr. O'Brien.

Mr. O'BRIEN: Yes.

By Mr. DURMENT:

Q. As I understand it, the question of rates depends, to a considerable degree, at least, upon the cost of doing the business and the density of the traffic, or, perhaps the density of the traffic has something to do with the cost, too; but those two elements enter into the making of a rate, do they not, very largely?

A. Certainly they do.

Q. And the cost of doing the business, aside from the question of the density of the traffic, will vary in different sections of your lines, due to the different grades and the different characters of the different sections, and perhaps to climatic conditions, (I don't know) will they not?

A. Yes, sir, the cost will vary.

Q. Then it might easily be true that the cost of doing a business in Minnesota would be either greater or less than the cost of doing the same class of business in Montana, the difference being due somewhat to the difference in the character of the country and the road-bed, and somewhat to the difference in the density of the traffic; isn't that true?

A. The cost might vary through some of those causes, and possibly from other causes.

Q. So that the cost of doing a similar kind of business might be different, in no two states the same, if we take the states through which your road runs, Minnesota, Dakota, Mon-

tana, Washington and Idaho?

A. It might be different, yes. It would be very different, possibly, in different parts of a given state.

Q. Then the question that bothers me is this, Mr. Elliott: That being true, how is it that the rate in Minnesota should be taken into account in fixing the rate in Dakota or Montana, or Washington or Idaho?

A. Largely because of commercial conditions. We are under a duty to the public to avoid discrimination (unfair discrimination) as between individuals and localities; we are under a duty to the public to afford good living facilities in one place as in another, and we cannot very well long sustain a very, very marked difference in the rates in North Dakota from what we have in Minnesota. There may be some difference, of course, due to some of these conditions that you mentioned—climatic conditions, less volume of business, larger empty car haul, heavier grades, but after you have taken them into account, then the commercial conditions come in, the necessities of the railroad as a great commercial machine, trying to treat all of your customers fairly, whether they live in Minnesota or whether they live in North Dakota.

Q. Then, as I understand you, it might well be, for example, that the cost of doing a certain class of business in Minnesota would be ten per cent less than the cost of doing a similar class of business in Dakota, and yet commercial conditions would be such that your road would have to give Dakota substantially the same rates, relatively the same rates as Minnesota.

A. I don't say actually. I say that there would be a tendency to force the Dakota rates down; we would have to take into account of course, this climatic change. One thing that has forced the Minnesota rates down has been the claim that Iowa and Illinois have lower rates, therefore Minnesota should have the same rate; and yet conditions are different.

Q. Yes.

A. Now, we cut the Minnesota rates down, and the people of North Dakota (who are active, energetic people) will naturally say, "Well, we want ours reduced *some;* we admit that some of our conditions are different, but we want them reduced some." And that very fact came out very clearly when North Dakota passed a two-and-a-half-cent passenger law instead of a two-cent, they said, "Well, we admit we are not quite like Minnesota, but we think we ought to have two and a half cents, as Minnesota is going to have two."

Q. That is to say, if you give a rate in Minnesota, you have got to make a rate to satisfy the people in North Dakota?

A. I didn't catch that.

Q. That is, if you lower your rate in Minnesota, you feel that you must, if necessary to satisfy the people of North Dakota, lower the rate there some?

A. Why, probably that would soon come.

Q. But that is the reason for it?

A. Well, and also build up all of your community; you don't want to have one part of your railroad a desert and the other part a garden.

Q. Then, as I understand you now, another element in that is that, in order to develop Dakota up to the standard of density of traffic in Minnesota, you would make a lower rate in Dakota if you lower your rates in Minnesota?

A. I think we might be forced to do that, in time, to develop the highest population, to make living conditions satisfactory.

Q. Then the cost of operation or the density of traffic is one of the smaller matters to be considered in fixing a rate, is it?

A. I don't say that. I say they are both important matters; very important matters to be considered. But rates are fixed by a whole lot of causes. You might take into account those you mention; you might take into account the widening

of the markets so that people can do business. It is business, it is just like a man that is selling drygoods, it isn't algebra.

Q. It isn't the cost of performing the service, then, that fixes it?

A. Not absolutely. That is one of the vital elements.

Q. It is only one of lesser importance, isn't it?

A. I wouldn't say that; I say it is of importance.

Q. But you wouldn't figure that, because you gave a rate in Minnesota which gave to the road a certain return over and above the cost of doing the work, you could maintain a rate in North Dakota which would give you the same percentage of return on the cost of doing the work there?

A. Not necessarily. You might be able to do it, but—

Q. You might, but you think probably you would not?

A. I think, in due time, that there would be a very strong pressure, of one kind and another, to gradually tend to drop your rates.

Q. So that you would have a rate in Minnesota that would enable you to do a business say bringing a return of ten per cent over the cost of the work, and yet you would feel compelled, under many conditions, to give a rate in Dakota that would produce say five per cent only return on the cost of the operation?

A. I can imagine that such conditions might arise.

Q. Well, isn't that exactly what you say here to-day you complain of, that because we make a rate in Minnesota, assuming, of course, (which you don't admit) that it would give you a return say of ten per cent over and above the cost of operation, that, being a lower rate than heretofore existed, it would, in all probability, result in your being required to lower your rate in North Dakota to a point that might not give you an equal return on the cost of operation in North Dakota?

A. That is one of the things we complain of.

Q. I think you said once before that a rate wasn't fixed upon the theory of producing a return which would equal the cost of doing the work and any certain or ratable percentage of profit?

A. Why, no; if it was, every railroad in the United States would be a profitable railroad. The Chicago Great Western—unfortunate now in being in the hands of a receiver—if it made its rates on that basis, would be a paying proposition.

Q. Well, I doubt that some. I think there may have been a good many leakages that would have "busted" that road, or any other road, even upon the theory you mention. Now, I notice you said in your testimony here that in certain cases you put in filler-in trains, which don't pay in themselves; what did you mean by that?

A. Well, for the convenience of the public—the local public in North Dakota and Minnesota—we put on a train this summer to run between Staples and Fargo. We claim it does not pay us a reasonable remuneration; that those people go back and forth a great deal, and we figured by giving conveniences to the public like that, even at a loss, at times, in the particular service provided, we tend to build up our whole country, and in the aggregate we perhaps make a profit. Then we also by that operation serve people that may be crossing the continent on our through trains and enable us to serve interstate business with more promptness than if we tried to do all of the business and make all of the stops on every train. It is an investment for the future. If we can attract a big population along our rails and we are allowed to have some voice in making the rates, we think our property becomes more valuable as time goes on.

Q. Then these filler-in trains, in a measure, are trains operated at a loss, upon the theory that they will build up the country and in later days return a profit to the road?

A. Well, we hope they will, yes.

Q. I say upon the theory that they will?

A. That is right.

Q. But for the present it is not expected that they will pay any return on the cost of operation and investment?

A. We have one case where, under orders of the Railroad Commission, we are running a set of trains,—well, that don't earn the wages of the crew, even, but yet we are ordered to run them.

Q. I can understand that, and I can understand the other, but I am speaking now as to cases where the road voluntarily does that.

A. Yes.

Q. How many trains of that sort did the Northern Pacific operate in the last year?

A. We had two sets of those trains; one between Fargo and Staples, running back and forth, and one between Pembina and Grand Forks, both of them running into the Dakotas as well as into Minnesota.

Q. Then they of course did an interstate business as well as a state business?

A. Yes, sir.

Q. In answer to one of Mr. O'Brien's questions, you said there was no excess of equipment, or practically none, considering your construction of new lines; I suppose you meant that a part, at least, of your equipment was being used in the construction of new lines and that you yet had enough left for the usual purposes of the traffic?

A. That is correct.

Q. And I suppose that the equipment so used in the construction of new lines is carried in that item of $519,000,000 which you have referred to as representing at least a large part of the value of the road on which you expect or are entitled to a return?

A. Yes, all of our equipment is shown up in the valuation.

Q. Now, what proportion of your equipment is used in the construction of new lines?

A. Well, in the construction of new railroad, during the last year perhaps two-tenths of one per cent.

Q. Two-tenths of one per cent, that is all? Now, you gave here figures for the amount invested in equipment August 30, 1907, or April 30th, somewhere along there.

A. Yes.

Q. Twenty-one millions for locomotives, in round numbers?

A. Yes.

Q. Seven and a quarter millions for passenger cars, and thirty to thirty-two millions for freight trains, and two and a half millions for work equipment?

A. Yes, sir.

Q. Was that the present value, allowing anything for depreciation or for new equipment?

A. That was put down as representing the value of that equipment, any place on the road, if you had to go and get it.

Q. New?

A. Yes, and place it there.

Q. And it allows now (I don't know that anything should be allowed) but it allows nothing for depreciation?

A. No, I didn't allow anything for depreciation in that item, for the reasons that I tried to give elsewhere: We believe we have kept it up in good shape.

Q. You were giving a number of instances where this ten per cent for incidentals that you call it—

A. Contingencies we generally call it.

Q. For contingencies, wasn't sufficient; you gave examples that ran from twenty to sixty or seventy per cent in excess of the cost of the work, and as one illustration, you spoke of the revision of the grade from Lake Park to Glyndon, and you explained why it overran; as I remember, it was that the work

was estimated upon the supposition that the character of soil was a certain kind; that subsequently you found that it was different entirely, which almost doubled the work. If it had been known, before you commenced the construction of this revised grade from Lake Park to Glyndon, that the character of the soil was as it in fact was found to be, would that line have been located at that place?

A. Well, that is a question of judgment. It would have to be the judgment of quite a number of people, because it was a large expenditure; but unless we had known, at the time we projected that enterprise, that the difficulty was going to be even more serious than it has turned out, I think we would have gone ahead with it.

Q. That is, you think you would have gone ahead even knowing the conditions just as you found them?

A. Yes, sir; it makes a very fine improvement in a great big long railroad, and an important improvement.

Q. Did you ever know a case where the contingencies ran under ten per cent? That is, where the amount—

A. In small jobs, I have, yes, sir.

Q. And by that you mean it was ten per cent of the amount of doing that particular job?

A. Yes.

Q. You said that at one time (I think last year, for instance) your road put in a large sum, with some bankers and others, to lend to farmers to get the grain moving; does your road customarily do that?

A. No; it has only been in one or two of these crises that it has ever been done.

Q. And where would that transaction appear upon the accounts of the Company, the books of account?

A. It would appear among our accounts collectible. My recollection is that we loaned out something like $800,000 on first-class collateral, so that we were absolutely secure, and it

was all paid back within ninety or one hundred days.

Q. You were inquired of, by Mr. How, I think, as to what, about, a railroad would appreciate with time, and you testified that it would be impossible to construct and turn over a new road in the condition that an old road would be in that had been well taken care of; that for some years, at least, the road would necessarily appreciate in value, due to the settling of the road-bed and the adjustment of the slopes and the cuts and the filling in from time to time of additional ballast and the like. Now, what of this caring for the slopes, adjusting of the slopes, and what of the putting in of additional ballast from year to year is a charge as a part of the operating expenses?

A. If the road has been ballasted and turned over for operation in a ballasted condition, when it is reballasted the entire cost is charged to operating expenses. If the road-bed has been suitably built in the first instance, with reasonable width of embankment and reasonable width in cuts, the necessary work each year of widening those banks and keeping them up to a safe width, of ditching the cuts, either to get rid of water or to prevent snow from coming in, is all charged to operating expenses.

Q. And what about the change of culverts and the like?

A. If we put in a concrete culvert in place of a wooden culvert, we charge to operating expenses the cost of the wooden culvert, and to capital or income account the extra cost of the improved facility.

Q. Then the very large part of the value of this appreciation is paid for as operating expenses, is it not, in the course of the years?

A. A good deal of it; we are constantly working on the road, shoveling in dirt here and dirt there, with the idea of making it safe and strong.

Q. And the whole purpose of doing that and the result

of its being done, is to enable the railroad to do an increased business, more expeditiously, with greater safety, and at less cost of operation, is it not?

A. Yes, sir.

Q. You have said here, as I recall it, that the facilities of the Northern Pacific Railway Company for doing business were adequate to handle far more traffic than it now handles?

A. In places.

Q. In places?

A. Yes, sir.

Q. Well, I don't know, I believe you mentioned at the terminals, at Ashland, Superior, Duluth and the Twin Cities, among them; that is true, is it not?

A. That is true except at certain seasons of the year when there may be a very great grain rush at the Twin Cities, and then they are not adequate.

Q. But for the usual run of business, your terminal facilities at Ashland, Superior, Duluth and the Twin Cities are adequate to a much larger traffic than the Northern Pacific now has?

A. Yes; we have added very materially to them for that purpose. Three years ago they were not adequate, and you remember the press and the public were very much disturbed about it. Now we are a little ahead of the business.

Q. Considerably ahead, are you not, at present?

A. Well, I don't know as I would use the word "considerably."

Q. Well, aren't most of these fifteen or sixteen hundred acres that you spoke of as having not in use embraced in these terminals I have mentioned?

A. Well, they are not ready for handling business.

Q. No, that is true.

A. Oh, yes, they are held for the future.

Q. But you have now, ready for doing business, all that

is necessary for the present business of the Northern Pacific road?

A. All that we are doing today at those particular places.

Q. And not ready for business that which would accommodate considerably more traffic, have you not?

A. At those particular places, yes. We are not quite as well hooked up in Minneapolis as we would like to be, even for the present volume, but we have been waiting there to see how business developed.

Q. Now, you also said that there was not, relatively, I believe, as to other roads, or comparatively, much business for the Northern Pacific road in Minnesota, but that you had facilities for doing a very great business. What did you mean by that, Mr. Elliott? I don't know that I quite understand.

A. Well, I mean this: that the station earnings at our stations in Minnesota show very little growth. You go to Anoka: very little growth. I may be wrong in naming some particular stations, but take it by and large, there doesn't seem to have been any increase in the volume of our business at the local stations on our railroad. On the Little Falls and Morris road, and up in the Red River valley, between Duluth and Staples, we could do more at those places than the people seem to offer to us to do.

Q. Well, were your roads constructed and your station grounds and facilities for handling traffic in Minnesota constructed with a view to an increased growth in business which hasn't come?

A. Well, I don't know that I can answer that, because I wasn't here when they constructed them.

Q. Has there been any falling off in the business since they were constructed, do you know?

A. I should judge there had from looking at the statements of earnings.

Q. How would you account for that?

A. Well, I can't account for it. It seems to me a strange thing.

Q. My memory is that you said that on your entire system there were about 221 miles of road that wasn't producing at this time. What do you mean by not producing?

A. Well, I mean this: We have a branch in Montana that leaves the main line from a point near Helena and runs up into what is known as the Red Bluff canyon. There is a great mountain there of ore that ten years ago people thought was very valuable, and we have got a branch up there. I think we run a train on it once a week, and we can't say that that branch produces any net return. If those mines should for any reason develop, either because of a higher price for mineral or improved method of the extraction of the mineral from the ore, that branch might be a very profitable branch.

Q. Can you say that that branch produces the cost of operation and maintenance?

A. I haven't any figures on it, but I should say it did not.

Q. That would be true of the entire 221 miles, do you think?

A. No, I think not; I think some of it could be fairly said to pay all of the expenses of maintenance and operation, but would contribute very little to the general welfare of the Company in the way of net earnings. It would contribute something. That branch I mentioned to you is about the worst we have got.

Q. How much, if any, non-producing mileage have you in Minnesota?

A. I think our mileage in Minnesota, as a whole, pays expenses and something over.

Q. That is, there is no branch of it or no line of it that does not pay the cost of operation?

A. Well, I will take that back. We have got—let me

look at a map here—the Banning quarry branch, in Minnesota, and the Grantsburg branch, that goes partly in Minnesota and partly in Wisconsin, I doubt if they pay anything.

Q. How long is the Banning quarry branch, and while you are at it, how long is the Grantsburg branch?

A. The Grantsburg branch is 5.08 miles; the other branch is 4.27 miles.

Q. What is the character of your operation of trains on those two branches, or do you operate any trains on them?

A. Well, to the best of my recollection on the quarry branch, we just go down occasionally when there is any business to be done. On the Grantsburg branch I think the way-freight runs down, the engine of the way-freight cuts off at the junction of the main line and goes down there, but I am not positive about that, Mr. Durment.

Q. Those lines were owned or were bought and paid for by the Northern Pacific, or were they built by industries which are reached by them?

A. Built by the St. Paul & Duluth.

Q. Now, referring to this Exhibit CC—Gray, you said this morning, as I recall it, that there was a sum appearing on here of about five hundred and nineteen millions of dollars or five hundred and thirty millions,—which is it?

A. Five hundred and thirty-two millions.

Q. Which represented the stock-and-bond investment—

A. No, sir.

Q. Well,—

A. I said—

Q. I haven't used your terms, but—

A. It represents property of the Company that we can't very readily dispose of, it is more or less fixed in its character, not fluid assets.

Q. But I thought you also said that it represented—while I don't quote your language, the idea I got was that that rep-

resented on your books the value or was the value at which was carried on your books the property of the Road which had been acquired by the proceds of stocks and bonds.

A. Well, I think you are wrong about that. What I said was that that $532,000,000 represents the book value of our fixed property which we have obtained from time to time, and against which there have been issued the bonds and the capital stock from time to time amounting to $513,000,000.

Q. Then that doesn't mean at all that that is the amount of money contributed by the stocks and bonds to acquire that property; that is, that doesn't mean that the $513,568,555.64 was contributed by the holders of stocks and bonds and invested in these properties which aggregate $532,902,581.65 on your books?

A. No. That means that the stock and bonds and other capital liabilities are *this* sum, and the book value of the property we cannot readily dispose of; the integral part of the System is *this* sum.

Mr. HOW: That is, the first "this sum" is $513,000,000, and the second "this," five hundred and thirty-two millions?

WITNESS: Yes.

Q. It doesn't necessarily mean that that amount of money, or any particular amount of money, was realized from the stocks and bonds?

A. I couldn't tell you how much was realized by the Railroad from the sale of stocks and bonds.

Q. Now, you have said as I recall it, that it appears upon your balance-sheet Exhibit CC—Gray, that the road has on hand a reserve fund of something like $9,000,000, and an insurance fund of something like $3,000,000, but it is *now* $5,000,000, and a surplus of $52,900,073.30; you explained that the $52,900,073.30, carried upon the balance-sheet Exhibit CC—Gray as profit and loss, was what was left after paying operating expenses, taxes, interest and dividends. Now, it is true,

is it not, that upon this balance-sheet it appears that the Company now has on hand assets which are the proceeds of its business done between June 30, 1896, and April 30, 1908, aggregating about sixty-four millions of dollars?

A. Also from the proceeds of this $60,000,000 of new money that the owners of the property have just put into it. That is referred to over here, too, you know.

Q. Yes, but aside from that, this balance-sheet shows that the Company has on hand on the 30th day of April, 1908, as an asset which was derived from its earnings and which was left after the payment of operating expenses, taxes, interest and dividends, the sum of $52,900,073.30, and this insurance fund as it then was, and these reserve funds as they then were, which make an aggregate of $64,000,000?

A. Well, it has in its assets those sums, as I tried to point out yesterday where they are.

Q. You don't mean that any part of this profit-and-loss account, or any part of the reserve fund, or any part of the insurance fund, were contributed by this stock subscription of $60,000,000 or over?

A. No part.

Q. The insurance fund and the reserve fund really were set aside from the earnings of the Road during that time, were they not?

A. Yes, sir.

Q. So that in these assets as they stand, there is $64,000,000, in round numbers, of money which was the proceeds of the operation of the road?

A. And its miscellaneous income from all sources.

Q. Well, by that,—do you include its dividends on stocks?

A. Whatever it got in as miscellaneous income, bank balances and—

Q. And have you any idea how much that was?

A. I gave that to you yesterday.

Q. Will you please state it again? I have forgotten it.

A. $14,082,484.11.

Q. Mr. Elliott, we are not quite certain that we understood what you meant by one matter you testified to yesterday. You said that if this surplus or profit-and-loss had been distributed in dividends, it would have made an average of nearly six per cent per annum dividends upon the capitalization, as I understood it.

A. What I said was, or intended to say, that if the owners of the property, instead of using this $52,000,000 in the way they have used it, namely, partly to build new property and partly to have money on hand for current uses, if they had used that and distributed it around, then there would have been earned and paid on the capital of the Company, bonds and stock included, an average return of 5.675 percentum per annum. That, however, you must understand, is a calculation based on the theory if they had done that they would not have been obliged to go and get other capital, by borrowing or in some way, upon which they would have necessarily paid interest, which would have made a greater charge and a less annual rate.

Q. Now, another thing: As I understand that (I think perhaps it is clear, but I want to make certain) it would have been that dividend upon stock and bonds each year instead of the one that was actually paid?

A. Instead of 4.29.

Q. And not an additional one?

A. No, not an additional one.

The MASTER: There was nothing additional paid on the bonds, I suppose?

WITNESS: No, I have just taken the total capitalization and figured what the return would have been if we had paid out everything we had.

The MASTER: Yes.

Q. That 4.29 you spoke of was the average per cent paid?

A. Yes.

Q. Upon the par value of stocks and bonds, distributing equally to stocks and bonds the amounts paid in dividends and interest?

A. Well, I understand what you mean, but I wouldn't put it quite that way. That 4.29 is arrived at by taking the total par of your bonds and the total par of your stock and the number of years that you are computing, (11 2-3) and dividing that sum by the total that had been paid as interest and dividends. If we are fortunate enough to be able to float our bonds at three or four per cent, why, that is an advantage that we are entitled to.

The MASTER: That is, the stockholders have got that?

WITNESS: Yes.

The MASTER: They didn't get it, but if they had got it it would have made a much larger per cent that the stockholders would have got, because they float their bonds at three or four per cent, therefore it would be a much larger dividend that the stockholders would have realized than the amount spoken of, four and a fraction?

Mr. O'BRIEN: No, I don't think your Honor has got that right. I don't think your Honor understands Mr. Elliott that way.

The MASTER: Well, he speaks of four and a fraction per cent on the stocks and bonds.

Mr. O'BRIEN: He has taken the entire interest and dividends paid upon stock since the reorganization of 1896, and has divided that between the entire aggregate of the bonds and stocks, and finds that it amounts to 4.29 per cent per annum; isn't that right, Mr. Elliott?

WITNESS: That is correct.

The MASTER: I see now. It would have made a very much larger amount if it had been confined to stock alone?

Mr. DURMENT: Yes. Of course, the fact is that for a considerable time the average has been seven per cent. It all appears in one of Mr. Gray's Exhibits.

Mr. HOW: I understand his testimony is that this profit-and-loss account has been accumulating since September 1, 1896, and instead of accumulating that, if they had divided as they got it, the average return upon the property received upon the stock value of the property (or the capitalization value of the property, is better, perhaps,) to the stockholders, it would have been 5.675 per cent, over the same period during which they have been accumulated.

Mr. O'BRIEN: My recollection is that the total dividends paid up to April 30th since 1896, amounted to 56 per cent. That would be about 4 2-3 per cent upon the stock. Now, if to that were added $52,000,000 it would make exactly nine per cent.

Q. I was going to ask, Mr. Elliott, if this $52,000,000 profit-and-loss had been used in increasing the dividends upon the stock outstanding, entirely excluding the bonds from any interest in it, what would have been the per cent per annum of dividends on the stock?

A. Well, I would have to figure it; I don't know.

Q. You haven't figured that?

A. No. But you must remember that if the Company had divided the $52,000,000, or started in to divide it, they never could have had as much as that at this time for the purposes of division, because if they had divided out everything each year they would necesarily have been borrowers and paying interest, and they could not have had as much as this. We don't know how much they would have had.

Q. I don't know whether that is so or not, since they own the Northwestern Improvement Company. It might be or it might not. That brings me to another question that I wanted to inquire about. Now, you say that in this $52,000,000 of

profit-and-loss is included about $14,000,000 of the income from its other investments.

A. Yes, sir.

Q. And not from operating expenses?

A. That is right.

Q. I suppose that in that was included, as returns from the Northwestern Improvement Company, only such dividends as it declared and paid upon its stock, and only such interest as it paid upon the bonds held by the Northern Pacific Railway?

A. That is all we got into the treasury of the Northern Pacific Company from that source.

Q. And what dividends did it pay? I mean at what rate did it pay dividends on its stock to the Company, do you know?

A. I don't remember; they have not paid any, for quite a number of years.

Q. And what interest did it pay upon its bonds?

A. It pays four per cent on the $7,000,000 of bonds in the Company treasury.

Q. Now, I think it appears from testimony of some other witness that this Northwestern Improvement Company was organized about the year 1900, some three or four years after the Northern Pacific Railway Company (the present company) was organized. Do you know?

A. It was organized some time in 1900.

Q. And it appears that all the capital stock in the company is owned by the Northern Pacific Railway Company.

A. That is right.

Q. Was it acquired by the Northern Pacific Railway Company at the time of the organization of the company? In other words, was the Northwestern Improvement Company organized for or in behalf of the Northern Pacific Railway Company?

A. I wasn't here then; I can't tell you. I can give you my

idea of why the Improvement Company was organized, if you want me to.

Q. Well, I haven't asked for that. And you yourself don't know, or do you know, how that stock and how the bonds of the Northwestern Improvement Company were acquired by the Northern Pacific Railway Company?

A. I never looked it up.

Q. You don't know, then, whether it was acquired by the payment of actual cash, in the purchase of the stock and bonds, or whether it was acquired by the transfer of Northern Pacific property to that company?

A. I never have gone into the past history of the Improvement Company. I found it here when I came, and took charge of it, and have endeavored to administer it in a reasonably satisfactory manner.

Q. Well, I don't know that your answer is so intended but it is evasive. The question is, do you know whether the Northern Pacific Railway Company purchased the capital stock and bonds of the Northwestern Improvement Company and paid cash for it, or whether it got it by transferring property to it?

A. I don't know; I couldn't say how it was done. I didn't intend to be evasive—

Q. I didn't suppose you did.

A. —but I wanted to point out to you that I hadn't gone into the past.

Q. Are you an official of the Northwestern Improvement Company?

A. I am.

Q. What office do you hold?

A. I am President of it.

Q. I see here on one side, on the liability side, debenture bonds, what are they?

A. There are $7,000,000 debenture bonds that are held in

the treasury of the Northern Pacific, and there are $1,359,451.-17 that are held in one of the trust companies in New York.

Q. Held in one of the trust companies in New York for what purpose?

A. Well, they are to be retired as fast as we sell off the Minnesota lands; they are an offset to the Minnesota lands.

Q. What officer of the Northwestern Improvement Company, or of the Northern Pacific Railway Company, would be able to tell us, as this time, what the Northern Pacific Railway Company paid for this capital stock and bonds of this Northwestern Improvement Company, and whether it was paid in cash or in property?

A. Well, I could, if I went and looked it up.

Q. Would it be much trouble for you to look it up?

A. No, I don't think so.

Q. Well, we may possibly ask for it. It is true, is it not, that all the capital stock and bonds of this Northwestern Improvement Company have been owned and held either by or on behalf of the Northern Pacific Railway Company from the time of its organization?

A. I think it is, but I don't know what they did before I came here.

Q. Now, I find in this balance-sheet (Defts. Ex. NN—Elliott) of the Northwestern Improvement Company, lands in Minnesota, North Dakota, Montana, Washington and Oregon; those lands, I suppose, were all a part of the original land-grant of the Northern Pacific?

A. No, sir.

Q. They have been purchased by the Northern Pacific Railroad Company or by the Northwestern Improvement Company?

A. Some of them are Northern Pacific land-grant lands, and others are not, that have been bought by the Northwestern Improvement Company.

Q. You spoke this morning of there being some timber lands which the Road had that made valuable tie material. Are those lands included in the lands carried as an asset of the Northwestern Improvement Company?

A. They are not.

Q. Those are lands held by the road outside of that turned over to the Northwestern Improvement Company?

A. Yes.

Q. You spoke in your testimony of certain coal lands being held for the benefit of the Northern Pacific Railway Company; are those coal lands that you spoke of, included in this list of coal properties which are carried as an asset of the Northwestern Improvement Company?

A. They are.

Q. I notice they are carried here on this sheet, all the coal lands, at a little over $4,000,000 in value.

A. Yes, sir.

Q. Mr. Cooper testified, as I recall, that the coal lands held by the Northwestern Improvement Company for the benefit of the Northern Pacific Railway Company were worth about $100,000,000.

Mr. HOW: No, no, he didn't.

Mr. DURMENT: Was it fifty?

Mr. HOW: Fifty.

Mr. DURMENT: All right, fifty, then; fifty millions.

Q. Do you know anything about the value of them?

Mr. HOW: A little mistake of fifty millions doesn't cut much figure in this case!

A. Why, on this balance-sheet the coal properties are carried at what the Company has put into them. The Company, or at least I, have never made any careful examination or estimate of what the coal properties are really worth. I think they are worth a great deal more than the book value shown here. The Northwestern Improvement Company has been for-

tunate. It acquired this property, and it has turned out to be a very valuable one. It is one of the strokes of luck that the Company had.

Q. You say they are carried there at the book value, or, as I understood you, at the amount the Company had put into them. Do you know whether there is included in that anything for the purchase price of those lands by the Northwestern Improvement Company for lands which were a part of the railroad grant?

A. It is barely possible there are a few cases. I think some of that was in the railroad land-grant and was transferred to the Improvement Company as a convenient vehicle for handling a business that was a little different from the railroad business.

Q. It appears from Mr. Cooper's testimony that a very considerable part of the Roslyn field, I think, and some of the others were.

A. Well, the Bull mountain field, for example, was a part of the land-grant, I think.

Q. And as I remember, he said a considerable part of the Roslyn field.

A. I don't know; all of the properties were acquired before I came here.

Q. What I am getting at is this: Do you know whether that $4,112,022.81 is actual cash put in, or does it include as part of it a value which was fixed on certain of these lands that were transferred, either directly or indirectly, from the Northern Pacific Railway Company to the Northwestern Improvement Company?

A. Well, my impression is that this is the absolute cash paid out by the Northwestern Improvement Company.

Q. Can you have that looked up for us and give us an answer to that question?

A. Yes, sir.

Q. Under the head of Miscellaneous Real Estate on this balance-sheet, do you know whether any of those items were a part of the land-grant of the Northern Pacific Railway Company and transferred either directly or through some third person or persons, to the Northwestern Improvement Company?

A. I know as to that miscellaneous real estate, that that was all purchased by the Northwestern Improvement Company outright. The item Iron Ore Lands, was originally a part of the Northern Pacific land-grant and was sold by the Company a great many years ago, and since the discovery of iron ore up in that country we bought back certain lands which at one time were in the land-grant.

Q. But they had passed from the Road?

A. Oh, yes.

Mr. HOW: When you say "we bought back," you mean the Northwestern Improvement Company?

WITNESS: Yes, sir.

Mr. HOW: Bought them from the purchaser from the Railroad Company?

WITNESS: Yes. I forget now I must differentiate between myself as president of the Improvement Company and president of the Railway Company.

Q. I also notice that this Northwestern Improvement Company, on April 30, 1908, owned something like nine or ten million dollars of Northern Pacific bonds and stocks. Were these bonds bought on the market, or how did this Northwestern Improvement Company come to acquire them?

A. Bought on the market.

Q. And this represents the price paid?

A. That is the price paid.

Q. And the stock, $1,061,352.91, was that bought on the market?

A. Yes, sir.

Q. And that is the price paid?

A. Yes, sir.

Q. And this 7,470 subscription shares, I suppose that was subscribed by the Northwestern Improvement Company by virtue of its ownership of the million and sixty-one thousand and some odd?

A. That was a part of it, and there has been a little bit bought since then, on the open market.

Q. Taking this balance-sheet of the Northwestern Improvement Company, under the head of Securities Owned, will you run through that, Mr. Elliott, and give us the particular items there which are stocks or bonds of roads that are a part of the Northern Pacific System and which are included as an asset, that is, where either the roads or the stock are included as an asset in Exhibit CC—Gray.

A. The prior lien bonds of the Northern Pacific Railway Company, the general lien bonds of the Northern Pacific Railway Company, the stock, the subscription to stock, the so-called joint fours, the Washington and Columbia River Railway Company first mortgage bonds, the Washington Central Railway Company bonds; I think that is all. Of course, I may be mistaken. I can't carry all these things in my head, but I think all these other things are not an integral part of anything that is listed on that balance sheet.

Q. Mr. Elliott, can you have prepared for us, without too great trouble, a statement showing the number of Northern Pacific prior lien bonds held by the Northwestern Improvement Company at the date of this balance-sheet, April 30, 1908, and the dates when they were purchased; the same information as to general lien bonds and as to stock and the stock subscriptions, and as to each of those other items that are on properties owned by the Northern Pacific—that is, the Northern Pacific-Great Northern Railway four per cent bonds —and the Washington & Columbia River Company first rail-

way mortgage bonds, and the Washington Central Railway bonds; and a statement of the rate of interest each class of bonds bears where it does not appear on this balance-sheet Defts.' Ex. NN.?

Mr. How: I want to make an objection here that this testimony is not material. I don't think Mr. Elliott has any objection to it, and I haven't, unless the demands upon him for the affairs of collateral companies are going to be so great that it is worth while to make a point of it in order to prevent a large amount of what seems to me entirely useless and irrelevant and immaterial work. I enter that, and if there is nothing more, or not too much asked for, I shall not, I presume, insist upon the objection.

Mr. DURMENT: I don't think from the amount that we will call for, you will have any objection upon that point.

Mr. How: Probably not, but I enter it to save the point.

M. DURMENT: I am not going to call for more statements here.

The MASTER: You may answer.

A. The books of this Company are not kept in Minnesota. and it would take ten days to two weeks to get that information. The Comptroller of the Company is very sick, I don't know whether we could get it even then. We will get it for you if we can.

Q. Will you get it and produce it some time before the testimony is closed. It probably won't involve any additional examination of him.

Mr. How: I should like to have you say that you will, subject to the consent of counsel. I shall have no objection, of course, unless it does develop—

WITNESS: Well, I will make the answer that, as now advised, I have no objections to producing it, but if my counsel advises me not to, why, I will be guided by his instructions.

Mr. DURMENT: Sure.

Mr. O'BRIEN: Well, we ought to know what the action is upon that point.

Mr. HOW: Well, I will give you plenty of time.

Mr. O'BRIEN: You were not here, Mr. Elliott, when this matter came up before. What was asked for was a statement of the assets and liabilites of the company, their value on some date that would be satisfactory, April 30th or the present date; and at that time it was assumed that if you would present a statement of the assets of the company which you would be willing to say was your best judgment, that we wouldn't want to know more about it, but this balance-sheet, of course, is so palably insufficient for the purpose of showing the value of the assets, that we don't feel that we can rest here; as, for instance, the item of coal lands, the discrepancy between the book values and Mr. Cooper's idea is so great—

Q. Has there been prepared by the Northwestern Improvement Company, or under its direction, an appraisal or valuation of its assets, at any time within the last five years?

A. I think not.

Q. Is there any record or estimate upon the records of the Northwestern Improvement Company of the market value of its assets as distinguished from the book value shown on this Exhibit NN?

A. I think not.

Q. It is commonly reported that recently the Northwestern Improvement Company has declared dividends aggregating in excess of $17,000,000, payable to the owners of the capital stock of the Northern Pacific Railway Company or certain of the capital stock of that Company; upon the face of this Exhibit NN it would appear to me doubtful that it had the money with which to declare or pay such dividend. For that reason I ask, does this Exhibit NN show all the resources of the Northwestern Improvement Company?

A. It shows everything about that company on April 30, 1908.

Q. Has that company acquired any considerable property since April 30, 1908, up to the present time?

A. It has been selling lands and getting in interest dividends.

Adjourned until Monday morning, November 23d.

FEDERAL BUILDING, St. Paul, Minn., Monday, November 23, 1908. Hearing resumed, pursuant to adjournment.

HOWARD ELLIOTT,
recalled on behalf of Complainant, testified:

RE-DIRECT EXAMINATION.

By Mr. HOW:

Q. Mr. Elliott, I think it appeared in your cross-examination that a large part of appreciation expenses, so-called, that is, expenses of reballasting and taking care of cuts, was charged to operating expenses. What is the primary object in railway operation of reballasting the right-of-way and of taking care of cuts?

A. When your railroad is built, presumably it is built and put in good order as a piece of machinery, ballasted and cuts drained and sloped, and the primary object of the work that you do upon it after that is to preserve it, keep it in good order and have it a proper and useful tool for the owners and for transacting the business for which the railroad is chartered.

Q. Supposing you neglected to reballast and to take care of the cuts during operation, what would happen to your right-of-way?

A. Well, little by little, our roadbed would deteriorate, our

railroad would be less valuable than it was in the beginning, be less useful to its owners and less able to perform its function as a common carrier.

Q. So that, as I understand it, the work of reballasting and of taking care of the cuts is a part of the protection and care of the property rather than of the construction of the property?

A. Oh, yes, all of that work is a fair charge to operating expenses if it simply keeps the property in good order; and, incidentally, of course, in keeping it in good order the road gets seasoned, and the appreciation of time is the result of the aging of the property and the seasoning of the property, but that class of work that we do in replacing ballast and reditching cuts and repairing station buildings, in order to take up the so-called depreciation, is a perfectly proper charge to operating expenses and would be an improper charge to construction or to capital account, unless we should add a better type of structure, or put in ballast where there never had been ballast before; but the primary object of all the expenses which are made for the purpose of keeping your road in order is to keep it intact, protected, have it as good as it was when the people built it, have it ready for the service of the public and service of the owners of the property.

Q. You have two lines from Duluth to St. Paul. I say "two lines," they are identical from Carlton to St. Paul, but north of Carlton there are two separate lines; one leaves Duluth, goes to Superior and through a farther portion of Wisconsin, and comes into Minnesota; and the other leaves Duluth and goes wholly through Minnesota, and they converge at Carlton and come to the Twin Cities. The line a part of which lies within Wisconsin is an interstate line; the line which lies wholly in Minnesota is a state line or a local line. How can you operate those two lines independently and upon a separate schedule of rates?

A. We can't.

Q. Something has been said with regard to the impossibility of discrimination in case the rates claimed to be discriminatory are each just and reasonable in and of themselves. Suppose that the State Commission of Minnesota declares that 95 cents is a rate reasonable and just, in and of itself, from Duluth to St. Paul; suppose that the Interstate Commerce Commission declares that a rate of $1.10 per ton on coal is a rate reasonable and just, in and of itself, from Duluth to St. Paul; what, in your judgment, would necessarily happen, in that condition of things, with regard to these separate schedules of rates?

A. Well, assuming the conditions that you outline, it is a clear case that the lower rate, made by the power of the State of Minnesota, would have to govern the railroad, not only as to the shipments from Duluth to St. Paul, all the way through the State of Minnesota, but also as to any shipments that might move from Duluth to St. Paul, passing part of the way through Wisconsin; in other words, the general commercial market transportation conditions are such that it would be an impossible matter for us to be maintaining an interstate rate of whatever it was you said, $1.10, and a state rate of 95 cents, and the result would be that the decision of the State of Minnesota would render null and void and of no account the decision of another power, namely, the Interstate Commerce Commission, and the so-called just rate, made by the Commerce Commission, would be nullified by the so-called just rate of the State Commission.

Q. How does the cost of operation of those separate lines compare?

A. Well, there is substantially no difference. There might be a little, but it would be very difficult to tell.

Q. Superior and Duluth are situated at the Head of the Lakes, side by side; suppose that the State Commission fixes

a rate upon merchandise from Duluth to St. Paul, and declares it a rate just and reasonable in and of itself; suppose that the Interstate Commission fixes a rate from Superior to St. Paul at a higher figure and declares that a rate just and reasonable in and of itself; how could you operate and maintain both those schedules of rates?

A. We could not.

Q. What would be the result in that contingency?

A. If we did try to maintain them separately?

Q. No, what would you have to do with your schedules of rates?

A. Whichever was the lower schedule would govern. Whichever was the higher schedule, commercially, and for every other reason, we would have to drop down to the lower level of rates. If the state rate was the lower, that would govern; if the interstate rate was the lower, that would govern.

Q. How does the cost of doing business between Duluth and St. Paul compare with that between Superior and St. Paul?

A. I should say they were substantially the same.

Q. There is some testimony given by you, under cross-examination, to the effect that a haul of from 100 to 150 miles on your System is the cheapest haul; what did you mean by that testimony?

A. Well, what we call an engine-haul we try to make never less than 100 miles and it sometimes is more than 100; in a few cases it runs up to 140, and I think we have one case, perhaps, where it is 150. Now, under the ordinary practice of railroads and methods of paying men and allowing for time, we get the most benefit if we have the whole 100-mile haul or 125-mile haul within one day's work rather than only a 30-mile or a 40-mile or a 75-mile haul in one day's work; and the terminal expense, therefore, on a 100 or 125-mile haul (the full engine-run(is spread over the maximum haul for that engine-run, and if you haul it only thirty miles, you have one full terminal ex-

pense at one end and a terminal expense at the thirty miles, which is therefore spread over only thirty miles instead of over 100 or 125 miles, or, possibly, in one or two cases, up as high as 150. That is, you must have two terminal expenses on every shipment, no matter how long the haul or how short the haul, and it is obvious that if your two terminal expenses are spread over a full division-run of 100 miles, they bear a lesser proportion than if they are spread over only thirty or forty or seventy miles. That was what was in my mind when describing that 100 and 150-mile haul, that it was the engine-run.

Q. You assumed that they began—that is, the division point is the place where they change engines—

A Yes.

Q. —and ended within the division, within the engine-run?

A. That is right.

Q. I think you testified that the rates complained of in this suit are, in your opinion, unjust, so far as Minnesota is concerned, and also because of their probable effect on all rates. Will you explain what you meant by that?

A. Well, as an actual fact, to-day, we have been obliged to reduce our rates between points in Minnesota, and between points beyond the state line of Minnesota, because of the reduction in the state rates of Minnesota. The effect of the Minnesota state rates is absolute and inevitable in affecting the through rates, but that effect is not necessarily felt the first day on freight business. It is felt very quickly on the passenger business. We had to make the two-cent-a-mile rate, for example, on passengers; well, that passenger scale of rates is very sensitive, and we very soon found out that we had to readjust our rates to Glendive or Helena, Montana, because of the two-cent rate in Minnesota. Now, while the effect on the freight rate is not quite so quick, it comes. We have already adjusted some of our freight rates between Minnesota points and points west of the North Dakota-Minnesota state line because

of the effect of the Minnesota rate, and we have demands upon us now from North Dakota to make a still further reduction in the through rates, and demands from Minnesota people to make a still further reduction in the through rates.

Q. That is, to points in North Dakota?

A. In North Dakota, based upon the effect of the local rate or the state rate within the confines of the state of Minnesota. So that it is inevitable that, in time, and in rather a short time, as you measure it in commercial affairs, your rates must be re-adjusted if you change them here as is proposed.

Q. It appears that your railroad System is and always has been operated as a whole and as one System, and without regard to state lines, and that it cannot be operated otherwise. You have, however, and have had, rates for local shipments; that is, I will call them for short-distance shipments, originating and ending on different portions of your line (in different districts, rather), of your System. That is to say, you have had a rate, for instance, from St. Paul to Fargo, you have had a rate from Spokane to Helena, you have had a rate from Tacoma to Spokane, etc. What I mean to convey is that your system of rates has been composed of through and local rates, long-haul and short-haul transportation. Now, what has been, heretofore and before the promulgation of the rates complained of in this suit, the relation of rates on different parts of your System?

A. The rates on the Northern Pacific System as a whole have naturally grown up and developed during the life of that Company and during the growth of the states and the people within the states. In order to meet all of the varying conditions that occur in a great stretch of country, those rates have been developed, not with regard to state lines but with regard to all of the different conditions that must be met in conducting a commercial business. Those rates have been adjusted, little by little, by countless competitive forces, physical conditions, topographical conditions, but without regard to these indefinable

boundaries of state lines. Now, in the main, all of those rates have developed and they have a correlation one to the other; in some cases that relation may be very remote; in other cases it would be very close; but in the main this great mass of rates, this great commercial establishment, has been built up by these countless forces, playing one upon the other, so that we have a system of rates that we think is fairly adjusted to all of the conditions that we meet. Of course, there will be conditions and things in a great machine that are wrong, and we try to adjust those as time goes on, but you go to work and introduce a complete new set of rates, like the Minnesota rates, and you do not create any new conditions of any other kind that justify a dislocation of the general relation of the rates that have grown up for the last twenty-five years, and if you do introduce such a new basis of rates, you create an unstable condition, and of necessity you are going to cause changes in the other rates. Now, in order to prevent discrimination and a dislocation, the mere fact that you have introduced a very low set of rates, if you like, in Minnesota, is inevitably going to force you to make some adjustment of your other rates, both local and interstate. I don't mean to say because you make a rate in Minnesota of ten or something, that that is absolutely the measure obtained somewhere else, but if you had 12 in Minnesota and 15 in North Dakota, it is inevitable that if you drop the Minnesota rate, in time you will be forced to drop the Dakota rate, and so on through the line. I don't see how you can possibly avoid that, under the law and under your duty under the law, to maintain a just and reasonable relation between all communities.

Q. What have you to say with regard to the proportional fairness of your rates considering the varying conditions in varying districts prior to the promulgation of these state rates in Minnesota?

A. We thought our rates were fairly well adjusted, consid-

ering all the conditions that we had to meet, the topography and the market conditions, the general competitive conditions, density of traffic, and all the other things that must be taken ino account in making your basis of charges.

Q. Is there any respect in which geographical conditions can be considered as conditions justifying a difference of rates?

A. Why, it never seemed so to me. I don't see, whether you are in one county or in another county, one state or another state, why you should vary your rates for that reason alone.

Q. Your rates in these different districts have not been the same; for instance, your rates for local transportation in Minnesota have not heretofore been the same as your rates for local transportation in Oregon or Washington, perhaps?

A. No, sir.

Q. But your judgment is that they have been ratable, proportionate and fair as between the different districts upon your System?

A. We have tried to make them so.

Q. Now please state again—perhaps you have stated it—what would happen if you disturbed that fairness and that equable relation of rates by cutting down your rates in one district.

A. Well, as I stated about the passenger rate, there was a disturbance that was reflected very quickly, because the individual passenger found out at once that he could, by buying separate tickets, get a lower rate than the railroad published as the through rate. That was a simple case. So the first adjustment that had to be made, after the Minnesota two-cent rate went into effect, was this adjusting of our through rate on passengers. That was a marked effect and easy to diagnose and recognize and adjust. Now, inevitably we must adjust, little by little, our freight rates, for the same reason: The shipper finds out what the situation is; he brings every proper pressure to bear on those representatives of the railroad with whom he deals

1383

to show that there is a dislocation, that the conditions under which he has been building up his business have been changed and that if it was fair before the Minnesota freight rate went into effect it necessarily is not fair *now*, and he demands, and under the laws of discrimination, in most cases must receive, consideration and adjustment of his rates, both local and through.

Q. Now, your rates, prior to the promulgation of these rates complained of, from St. Paul west, say to Moorhead, and from Fargo west, say to Bismarck, were, as I understand it, equable and fair, not perhaps the same rates, but fair considering all conditions. Suppose, under such circumstances, you lower the rates under compulsion from St. Paul west to Moorhead, what, if anything, happens to your rates from Fargo west, say to Bismarck, and why?

A. Well, the interstate rate from Minnesota points to Bismarck was adjusted—

Q. No, I am not speaking of interstate rates; I am speaking of the rate from St. Paul west to Moorhead as compared with the rate from Fargo west to Bismarck.

A. Well, as already stated, in a case like that, it would only be a reasonable time, and, in fact, the time has already arrived with us, within which the residents of North Dakota have come to the conclusion that they are fully as much justified in having some reduction in their rates from Fargo west to Bismarck commensurate with the reduction in the rates from St. Paul west to Moorhead. They have already made a demand for a readjustment of all the local rates in the state of North Dakota, one of the reasons being that, if the rates in Minnesota are to stand on a lower basis, they are entitled to some reduction of what they have to pay in the state of North Dakota.

Q. Do you know of any way in which this discrimination, resulting from the disruption of the equable relations which you testified had existed, can be avoided without a correspond-

ing reduction in other parts of your System?

A. I do not.

Q. Has there ever been devised, to your knowledge, or can there be devised, a scheme under which a railroad can charge for interstate transportation more than the sum of prescribed state locals?

A. I don't see how it is possible.

Q. The state locals, of course, constituting the interstate transportation—

A. I don't see how it is possible. They would have to make a through rate no higher than the sum of the rates made by the separate states.

Q. Do you know whether it is possible, as a practical matter, to charge for interstate transportation more than the sum of state locals as a practical—

A. Oh, you could for a little while, until somebody found it out, and then, of course, you would have to adjust.

Q. What experience did you have in your passenger transportation, after the passage of the two-cent law in Minnesota and the promulgation of the rates?

A. Well, we found, right away, that we had a very marked and extraordinary increase in the volume of travel between Moorhead and the Twin Cities, compared with the same period a year or two years ago; and we began, of course, to look into it, and found it was due to the fact that a constantly increasing number of people who might be moving between the Twin Cities and points in North Dakota and west thereof were buying tickets through to Fargo or Moorhead (presumably the latter point) and then rebuying from Moorhead to the Twin Cities. In other words, they were making the through rate themselves on the passenger transportation by buying a ticket up to the junction, and then buying another ticket. So it was obvious that we might as well adjust our rates on that basis and give the traveling public the convenience of a through ticket and

relieve them of the disability of having to get out of the train and buy another ticket.

Q. The discomfort, you mean, rather than the disability?

A. The discomfort of buying another ticket. And that difficulty finally was adjusted by our readjusting our passenger tariffs a long way out, I wouldn't say how far out, I think it went as far as Spokane, on the basis of the two-cent rate in Minnesota and the two-and-a-half cent rate in North Dakota. So, practically, the effect of the two-cent rate in Minnesota, if we didn't readjust our through rates, was to take away a large proportion of our interstate passenger business and it was transferred into local Minnesota business in so far as you may say the buying of a ticket from one Minnesota point to another makes it local business.

Q. It makes it so absolutely, according to your understanding of the matter, under the contract?

A. Oh, yes; he becomes a through passenger then. He buys a ticket from Moorhead, and under that we have entered into an arrangement with him to transport him from Moorhead to the Twin Cities.

Q. And I understand that, in your judgment, you are deprived of a large proportion of your interstate passenger business.

A. Yes, and it is growing every day.

Q. That is, the amount of your deprivation?

A. The amount of the deprivation is growing every day until we fix these through tariffs.

Q. You have, perhaps, implied in your cross-examination, that the merchandise rates now in effect under the order of the Commission complained of, were voluntarily put in by your Company, although perhaps the implication will not stand close investigation, but I would like to have you explain what you mean by that, and how those rates were put in and under what circumstances.

A. When the merchandise rates were promulgated and ordered in by the Commission, our Company, acting in common with others, objected, thought they were unwise. We, however, were led to believe that a number of companies were going to accept the merchandise rates, and it was obvious that, if they did, it would be very difficult for us to maintain a different basis. It was well known, also, that the penalties for failure to obey an order of the Commission are severe, and finally we put the rates in—voluntarily, in one sense of the word, that we didn't have an order from a judge to do so—but we had no conference or agreement with the Commission which resulted in the making of those merchandise rates upon a basis which was acceptable to us. The rates were not voluntarily made by us, in the first instance, they were accepted by us because we thought we had to accept them, accepted under duress.

Q. What was your judgment at the time in regard to the fairness of the rates?

A. Well, I thought then, from my previous experience further south in the Mississippi valley, that the rates were unjustly low for the kind of a railroad that the Northern Pacific had in the north half of Minnesota, the kind of a railroad and the kind of a country served.

Q. It perhaps is implied from your testimony, although possibly fully enough explained today, that the North Dakota reductions in merchandise rates, that is, reductions from points in Minnesota to North Dakota, were voluntarily put in by your Company. Will you explain why reductions from points in Minnesota to points in North Dakota have been made by your Company so far as they have been made?

A. The Twin Cities and the Head of the Lakes, have built up a large business between the Twin Cities and the Head of the Lakes, and between points in Minnesota, points in North Dakota and points west thereof. When the Minnesota rates were reduced, in order to avoid discrimination and to preserve,

in part at least, the same general relation in rates between the two large distributing points of the Twin Cities and the Head of the Lakes and points in the West, we were forced to make a readjustment of our rates through to North Dakota points. You might say that such reduction and readjustment for the purpose of preserving in part the proportional relation between the rates, was voluntary, in that nobody came around and told us, "You must do this," but it was compulsory by reason of the lower rates made by Minnesota and by reason of our duty under that law to avoid, so far as we can, unjust discrimination between localities, and although we have made one adjustment of the rates under discussion between the eastern terminals and points in North Dakota, that adjustment is not considered satisfactory by our partners in the enterprise, namely the shippers, and they are asking us for still further readjustment, claiming that we have not restored fair commercial conditions and put them in about the same relation to the general business that they were prior to the Minnesota rates, and that therefore it is our duty to go as far as we can in restoring them to substantially the same conditions under which they built up a great commercial business here in the last twenty-five years.

Q. What do you consider the cheapest transportation, so far as cost of doing the business is concerned, upon the Northern Pacific System?

A. Well, you take the movement of large blocks of low-grade freight, where the freight is loaded and unloaded by the shipper, where it moves in trainload lots, where you get pretty generally a back load for the car that is made empty, I should say that was the cheapest kind of transportation.

Q. And where is the most of that had upon your System? I am asking now for locality rather than for character of it.

A. We have quite a heavy movement, at certain seasons of the year, of that character between Spokane and the Sound,

where we have lumber and coal coming East into the wheat-growing districts, where they want the lumber and the coal, and their wheat goes back. We have, for a considerable portion of the year, a movement of that character between the Head of the Lakes and the Twin Cities, where we have a general movement of coal and some lumber coming south, and a pretty considerable movement of flour and merchandise going north, and where we have the benefit of a low-grade line that is pretty well completed and in good order, and where we are able to load our trains to their maximum capacity much of the time in both directions. I should say that would be one of the most economical kinds of business the Northern Pacific has, that steady back-and-forth movement between the Twin Cities and the Head of the Lakes; and those trains, we fill them in, at times, with freight we are hauling for the St. Paul Road. They have more or less business that goes on to southern Minnesota and other places. That enables us to keep pretty full tonnage trains moving in both directions.

Q. If the purport of a portion of your cross-examination is clear to me, it seems to be used as an argument to the effect that the legislative rates prescribed are sufficient; that the rate on coal charged by the Northern Pacific commercially from the Head of the Lakes to St. Paul is less than the prescribed legislative rate; it is 153 miles from the Head of the Lakes (from Duluth) to St. Paul; it is 153 miles from Rice's, a station on your line north of Minneapolis, to Gantz (and it isn't clear to me where Gantz is, except they are both within the state of Minnesota)—

Mr. DURMENT: It is on the Northern Pacific.

Q. Well, it is on the Northern Pacific. The rates prescribed by the legislature, I wish you to bear in mind, are maximum distance rates. I ask you what bearing the matter of sufficiency of rates between St. Paul and Duluth has upon the matter of the sufficiency of a distance tariff between Rice's and Gantz,

for instance, or between any two other points upon your line in the state of Minnesota 153 miles apart.

A. Why, in my judgment, the rates between the Twin Cities and the Head of the Lakes have absolutely nothing whatever to do with what you might charge between these two points. I will clear up the geography for you: Rice's is up near Royalton, where the new Soo lines crosses our road going to Duluth, and Gantz is up near Dilworth, our new division terminal in western Minnesota.

Q. I was careful to select two points that were not terminal points, but mere distance points.

A. Well, that is what they are.

Q. I understand that generally a terminal tariff, if a railroad is permitted to fix it without unfairness, is less than a mere distance tariff?

A. Heretofore they have so adjusted the rates, believing that it was right to try to build up the business in that way.

Q. Do you claim that all the rates prescribed by the legislature or by the Commission are unjust between all points upon your System and for all distances?

A. No, I never made that claim. I don't make it.

Q. But only that the general effect of them is unjust, and that the sum total that you could realize from them will be insufficient?

A. The sum total and the inevitable effect on our rates generally would be unjust to us.

RE-CROSS EXAMINATION.

By Mr. O'BRIEN:

Q. Mr. Elliott, did you bring a statement of the assets of the Northwestern Improvement Company with you this morning?

Mr. How: I forgot to make a statement with regard to that. I promised Mr. Elliott I would. The statement that you asked

for it is impossible to make, that is, with regard to what the coal lands cost. There are some hundreds of deeds, it seems, and those deeds have got to be examined and compared with the books, and it will take some time to make it, but they were at work, as I understand it, all day Saturday and all day Sunday, but they may not be able to have it for a week. Other information that you asked for, with regard to the purchase price of the Northern Pacific bonds, Mr. Elliott has telegraphed for, to Tacoma, or written, I don't know which.

WITNESS: Written.

Mr. HOW: Written, but it will probably be ten day before we get that.

WITNESS: And the other information that you asked about, the creation of the Company, I have got to have that looked up very carefully. I find I am not advised well enough to make a statement, but we will have it looked up; there is nothing to conceal about it. I thought I could have it all for you this morning, but it is impracticable to do it.

Q. I forgot to ask you Friday with reference to the matters leading up to the sending of the telegram marked Ex. 32, a telegram which you stated you received and which purported to be signed by Mr. Shepard and Mr. Perkins; that telegram was sent to you at New York?

A. Yes, sir.

Q. You were in New York at the time of its reception?

A. I was.

Q. At the time of its reception, the executive committee of the Northern Pacific was in session, was it?

A. We were having a series of meetings, that week, about various matters, and whether we were in session the day that message came or not I couldn't say; I think probably we were.

Q. Was the meeting called to consider the question of resistance or nonresistance to the acts of the legislature fixing the passenger fare and commodity rates?

A. Not exclusively for that. There were many other matters for discussion. That was one of the matters.

Q. That was one that was discussed. Was a conference held on that question between representatives of all of the railroads doing business in Minnesota?

A. I don't know.

Q. Well, were you present at any such conference?

A. I was not.

Q. Was this telegram from Mr. Shepard and Mr. Perkins, if sent by them, sent at the suggestion or request of yourself?

A. No, sir.

Q. Or of any officer or member of the executive committee, so far as you know?

A. Not so far as I know.

Q. Nor so far as you have any reason to believe?

A. I have no reason to believe they asked to have the message sent.

Q. It was an idea, so far as you know, that originated entirely with those gentlemen themselves?

A. And their lawyers, I suppose.

Q. Had you any reason to believe that you would receive such a telegram as that when you were in New York?

A. Well, I had this reason to believe, that they were going to protest against the rates and make a demand upon me to put them in.

Q. Did you know who were going to protest, what particular stockholders?

Mr. How: "Not to put them in," you mean?

WITNESS: Not to put them in.

A. Yes, I knew that Mr. Shepard and Mr. Perkins were going to protest.

Q. When did you ascertain that those two gentlemen were going to protest?

A. I don't know that I can give you the dates. The matter

was discussed very generally all through the spring as to the very serious condition confronting the integrity of the Northern Pacific rates, and, as President of the Company, I was naturally asked by many people what it all meant and what we were going to do about it, and I told a great many of our people, directors and stockholders both large and small, that it seemed to me we were coming to a crisis in our affairs and that I, as President of the Company, was being driven into a position where practically I was powerless to help them because the penalties were so great, and that the only thing, it seemed to me, that could be done would be for somebody to come in and see if they couldn't stop it; that is, to pursue the same course that was pursued in the Nebraska rate case, where the stockholders intervened there.

Q. You said that the one consideration that induced you to put in the merchandise rates was because the penalties were so great?

A. Yes, but they didn't send me to jail.

Q. Did the penalties in that case also operate so as to prevent you putting in the rates?

A. They didn't at that time, for the reasons I have tried to point out, although I didn't like to put the rates in.

Q. When the Commission made an order on commodity rates, however, the road did commence an action?

A. Yes, sir.

Q. The penalties did not deter you from commencing an action in that case?

A. Apparently not.

Q. Now, I will ask you the question just as broadly as I can, Mr. Elliott, and try to make it broad enough so one question will cover it all: Is it not a fact that the Complainants in this case commenced it at the request and suggestion of the management of the Northern Pacific Railway Company?

A. I will be very glad to answer that question very frank-

ly, in every way, shape and form. Mr. Perkins was a large stockholder in the C. B. & Q. Railroad, (he has since died) he was a man of very wide experience in railway management, with a fine standing before the community in which he lived. He asked me about these Minnesota rates. I had very intimate relations with Mr. Perkins for twenty-five years—

Mr. HOW: He has been President of the C. B. & Q.?

WITNESS: He has been President of the C. B. & Q.—and I told him it was a very serious condition confronting the Northern Pacific road, and every other railroad, for that matter, and the effect would be very far-reaching in the dislocation of our entire schedule of rates and the shearing off of a large amount of gross revenue, if the thing stood, but that I didn't know what to do about it, (and I told our directors in New York the same thing) that it was very serious; that if he, as a large stockholder, wanted to intervene, that was his business and not mine. And we talked about it several times. I didn't ask him to intervene, didn't urge him to intervene. I told him, of course, I, as a small stockholder, would be glad if somebody would intervene, and he finally made up his mind he would act, and he did act. Now how Mr. Shepard came to act, I don't know. I don't know that I ever had any talk with him, except in the most general way. I may have said just the same things to him that I did to Mr. Perkins, that this was a very serious condition and I felt my duty to the stockholders as a whole justified me in pointing it out to any one with whom I had friendly relations and who might feel disposed to respond. I didn't feel that I, as a small stockholder, and also, as President of the Company, could bring an action myself, because my financial interest in the property was very small and there was a question whether it was proper for me to do so, anyway, as an officer. But I want to be absolutely frank with you about that, I was very glad indeed that Mr. Perkins finally decided he would act just as others acted in Nebraska when he was

President of the C. B. & Q.

Q. Well, I think you have been absolutely frank, Mr. Elliott, as I expected you would be. Now I will ask you another question, just as broad as possible, so that you can answer it fully: Was there any arrangement or understanding, express or tacit, by which the corporation was to bear the expense of this litigation, in the first instance?

A. I had no discussion whatever with Mr. Perkins about that, or with Mr. Shepard.

Q. Has the corporation assumed any of the burden?

A. Yes, sir.

Q. And at the present time the action is maintained by the corporation?

A. Not entirely. I will be perfectly frank with you about that.

Q. Partially?

A. I will explain to you. Some time ago, Mr. How came to me and said that he had had large expenses in conducting our part of this case, and I advanced him $10,000 to help carry those expenses along. Whether he pays it back to me or not, or how it is to be finally adjusted, I don't know; but I felt justified in relieving him from any embarrassment in conducting the affairs of the case by making him that advance.

Q. Has there been any act by the corporation, the board of directors, or the executive committee, or any of the officers, guaranteeing the Complainants from loss in the bringing of this suit, or that they will be reimbursed for any expense they may be at?

A. None whatever.

Mr. HOW: You see what a hazard I am running, don't you?

Mr. DURMENT: I should say it looks as if the attorneys for the Railroad and for the State were working on the same basis —each taking their chances of getting anything.

Q. Mr. Elliott, you have stated that the cost of reballasting

a road, replacing the ties and rails, repairing equipment, are always charged to operating expenses.

A. Yes, sir.

Q. And properly so?

A. Yes, sir.

Q. If that was not true, and if the work of maintaining the roadway and equipment was not carried on, of course they would both practically wear out, would they not?

A. Yes, sir.

Q. The investment would entirely disappear, and if it was not charged to operating expenses it would require a new investment each succeeding year, would it not?

A. Yes, sir.

Q. So that it seems that there can be but very little dispute between any persons upon the point that that is a charge which should be properly borne by the operation of the road?

A. Well, I *think* that is right.

Q. Well, I agree with you. Now, where the operation of the road and the maintenance of its equipment in the manner that you speak of, largely increases the value of the physical property, but the investment remains the same, and that increase in the value has come from expenditures realized from rates charged the public, do you consider that it is fair to add the appreciation to the investment when you have got to consider rates?

A. Why yes, I consider the seasoning of the road and the results that you get from its becoming more settled, its embankments getting adjusted, are incidents to this other work which was absolutely necessary, but that as to such incidents, we are entitled to any benefits that may flow from them.

Q. But hasn't the public paid for that in rates when you paid those charges out of operating expenses? and if it is true (as I think it is) that the operating expenses should bear this

cost, isn't it also true that it should not be added to the investment?

Mr. HOW: That is a question of law. Don't you think you had better ask me that question, Mr. O'Brien? I think it calls for an argument of law by the witness.

Mr. O'BRIEN: If I should answer your question categorically, you wouldn't think I was polite, as between you and Mr. Elliott.

Mr. HOW: If you ask me that question I will take a half an hour to answer it.

The MASTER: You may answer.

The question was read.

A. The public received a full return for what it paid in the way of rates by the service then rendered for the rate paid; and I think that the Railroad is fully entitled to any incidental benefits that may have come because of the work that it did in order to keep its property in good order to perform the service.

Mr. HOW: I waive any desire which I may have had to answer the question.

Q. So that, notwithstanding the fact that the rate is necessarily increased so as to furnish a fund to maintain the propery and thereby increase its value, you think that subsequent rates should be adjusted upon the addition, upon the basis of adding to the original investment that increased value secured in that manner?

A. I can't agree with the first part of your supposition. The rates were not increased for the purpose you suggest.

Q. Possibly I was unfortunate in the use of the word "increased." Rates were fixed so as to permit of that expense?

A. The rates were fixed in the hope that the total receipts for the service rendered would permit adequate care of the property.

Q. Yes.

A. Now, if, incident to that adequate care of the property,

the property gradually improved in character, the roadbed became settled, the flow of the water along the bank was taken care of, the abutment of the bridge was protected by rip-rap; if, incident to all that you had a safer and better piece of machinery, I claim we are entitled to consider that in the value of our property.

Q. Well, my chief object was to get your view upon that, Mr. Elliott.

A. Well, it has been my endeavor to give it.

Q. You say the cost of operating a train between Superior and Duluth and the Twin Cities is practically the same?

A. Substantially, yes; it would be very difficult to figure out that it varied much from Duluth or varied much from Superior.

Q. About as difficult as it would be to determine the difference in the cost of transporting freight from Duluth to either of the Twin Cities?

A. Just about, yes.

Q. Similar conditions exist?

A. Very similar.

Q. So that, in the illustration that you give, if the State fixed a rate of 95 cents upon coal from Duluth, and the Interstate Commerce Commission fixed a rate of $1.10 from Superior, we would have a case of discrimination?

A. It would appear so.

Q. Does that illustration to your mind have any bearing upon the question that was discussed last Friday between us as to whether or not the final test must always be the justness of a rate in itself?

A. Why, naturally it has some bearing.

Q. Well, in what way?

A. Well, if the Interstate Commerce Commission, after careful consideration, decided that the $1.20 is a just rate, and the State Commission decided that 95 cents is a just rate, I don't see but what one has a bearing on the other. There is a conflict

right away.

Q. There is a conflict in the conclusion of those two tribunals, is there not?

A. Yes.

Q. But each of those rates must finally come before the same tribunal, must it not?

A. I don't know; I suppose it must.

Q. And you know that unless the rate is sustained as being just in itself, in that final tribunal, it cannot be enforced?

A. No, presumably not.

Q. So the question comes right back again to the proposition that the test is whether or not a rate is just, in and of itself?

A. All conditions considered.

Q. Certainly, all conditions being considered.

A. Yes.

Q. All conditions affecting that rate?

A. Oh, yes.

Q. So that you never could be compelled to enforce the 95 cent rate fixed by the State until that had been determined to be a just rate in itself?

A. Well, I don't know whether we could or not; it would depend on whether we could get any power that would stop us from putting a rate in.

Q. Well, you have done pretty well so far.

A. Well, you said "never."

Q. Now, rates are not the same in different localities, are they?

A. No, sir.

Q. Rates are not the same upon the Northern Pacific in different localities?

A. No, sir.

Q. I am speaking now of rates for the same distance.

A. No, sir.

Q. Rates are not the same for the same distance in the state

of Minnesota?

A. Not in all cases; no, they are not the same. We have these jobbers' rates—

Q. And yet you say those rates do bear a proper relation to each other?

A. Well, we think the[illegible]ave been worked out, in the friction of business, so that they have been adjusted on a reasonably fair basis, between communities and counties and states, etc.

Q. And the first consideration in all of those rates is the cost, is it not, the cost of the service?

A. Well, I have tried to point out, again and again, in my testimony, that cost is one of the very important elements in rate-making but it is not the only element. You have got to take into account countless forces in making rates—the competition of your markets, the competition of other railroads, the longer haul by your road or the shorter haul by the other road, your empty-car haul, the wage-scale, the topography; and cost is not the only or the most important. It is, in the long run; unless you get cost out of all of your business of course you stop.

Q. Is that not the first element to take into consideration?

A. I shouldn't say it was absolutely the first, if you use "first" in the sense of greatest importance. We do things at times, to get our business started, where we throw cost to the winds.

Q. Now, of course, Mr. Elliott, there are always cases where there is no rule to which there are not exceptions.

A. Yes, that is what I am trying to say and what I do say.

Q. We necessarily must confine ourselves in these matters to general principles?

A. Yes.

Q. Now, as a general principle, is it not true that the first consideration, using that term both with reference to its importance and also to orderly investigation, in a determination

of a rate, would be to ascertain the cost?

A. Well, I would not use the word "ascertain," I would use the words "to make some estimate of what you thought it was going to cost you."

Q. So modify it, would you?

A. I would say that that would be—that, we always would consider that.

Q. Consequently, when you say that these rates have not borne a proper relation to each other, you of course have some knowledge of the cost of each service?

A. No.

Q. Then you are not competent to say that they do bear a proper relation to each other?

A. We have some notions about the relative cost at different places but we have none about absolute cost.

Q. As a matter of fact, do you know any of the rates at all? Do you know what the rates are on the large portion of the commodities hauled by the Northern Pacific road?

A. I have been over a good many of the tariffs; I couldn't tell them to you today.

Q. But you have investigated that at different times?

A. Oh, I have at times gone over the tariffs. I don't claim to be an expert in court on rates in detail, I don't sit up here to make that claim.

Q. No, of course you couldn't. It would be an impossibility for you to perform the duties of your office and at the same time to be perfectly familiar with all the rates, would it not?

A. Yes, sir.

Q. So that when you speak about these rates being relatively equal and relatively correct, you do so without any particular knowledge as to the relative cost, and without any particular knowledge as to what the rates are?

A. I do so based on the fact that for five years I have discussed daily, and almost hourly, with the officers of the Com-

pany, the welfare of the Company, and with a desire to see that our adjustments generally are fair as between communities, fair as between states and so made as to produce the maximum amount of movement; I have taken tariffs and looked them over, and we have said, "We think this one is right, we think that one is right."

Q. Have you ever made a close examination of the rates upon commodities in force upon the Northern Pacific road in the State of Minnesota?

A. At one time I had a statement which I went over with some of our people, showing a comparison of all of these rates with all the other rates in other states. That must be a year ago now.

Q. As a matter of fact, the rates in Minnesota upon the Northern Pacific vary considerably, do they not?

A. Oh yes, we have a great many rates in Minnesota.

Q. Eastern Dakota is very similar to western Minnesota, is it not, in its topography?

A. Quite so.

Q. The service rendered to that portion of Dakota is very similar to the service rendered to western Minnesota?

A. Very similar.

Q. It would be rather difficult to show that a rate from St. Paul to Crookston or Moorhead or East Grand Forks, which was just and fair in itself, was relatively too low as applied to eastern Dakota, would it not?

A. I should think it would be rather difficult, yes.

Q. The reason you have found it necessary to change any rates in eastern Dakota so as to bear a proper relation to the merchandise rates in Minnesota comes from that fact, does it not, from the fact that I have mentioned?

A. Well, it may indirectly follow from that fact, but it comes more directly from the fact that shippers who have been engaged in business in the eastern part of North Dakota claim

that since the Minnesota rates became effective they were losing customers that they heretofore had.

Q. That has been the demand that has been made upon you that you are referring to now?

A. Yes.

Q. Similar conditions, however, end with the Missouri river, do they not, Mr. Elliott?

A. Similar conditions in what way?

Q. Between Minnesota and Dakota.

A. You mean the topographical?

Q. Yes.

A. Yes, the general character of our railroad between the Missouri river and the Yellowstone valley is different from between the Missouri river and the Red river valley.

Q. In other words, this similarity of topography practically agrees with what was originally the territory of Minnesota?

A. Well, I don't know what was the territory of Minnesota, so I can't answer.

Q. Well, it ends with the Missouri river, as I said.

A. Well, there are a great many conditions east of the Missouri river and the eastern half of North Dakota that, for general railroad purposes, are quite similar to some of the conditions in Minnesota.

Q. Now, you do not pretend to testify, do you, that that condition extends, or the same necessity will extend, the entire length of the Northern Pacific railroad?

A. The necessity for a readjustment of the rates?

Q. Yes.

A. Yes, sir; I think it would be like a row of bricks, they would follow along any time.

Q. Could you estimate the time?

A. Oh, I should say we would get up against the question very quickly,—within a year.

Q. Now, it is true, is it not, that the rates between here

and eastern points (interstate rates) between, for instance, St. Paul and Chicago, have been very much lower for a great many years than the rates maintained in Minnesota; it hasn't had that effect, has it?

A. I think it has had an effect in gradually bringing about reductions in the rates in Minnesota.

Q. Well, of course, I suppose it has had some effect—

A. Yes, sir.

Q. —but do you mean to imply that the rates in Minnesota have been adjusted with a very great amount of reference to the rates (for instance) on merchandise between here and New York?

A. I think at times they have, yes.

Q. Have you ever made any comparison of the rates, for instance, prevailing from New York to Minnesota Transfer and the rates from Minnesota Transfer to points in Minnesota?

A. We have some rates in connection with the Head of the Lakes that bring merchandise down to St. Paul and Minneapolis from the Head of the Lakes in order to compete with the all-rail rate from the East to St. Paul and Minneapolis.

Q. But I spoke about rates from St. Paul and Minneapolis to points throughout the state, not to the Head of the Lakes.

A. No, I never made any comparison of that nature.

Q. And you say this because you claim that it is impossible to maintain a through rate which is more than the sum of the locals?

A. In the long run you cannot maintain a through rate for more than the sum of the locals.

Q. Is it not true that if the local rates are each just, a through rate which would be higher than the local rate would be excessive?

A. I think it would.

Q. So the real reason that you cannot maintain a through rate which is in excess of the locals where each local rate is

just in itself, is that necessity proves that the through rate is excessive?

A. That is right, and the man wouldn't ship on the through rate anyway.

Q. And the man wouldn't ship on the through rate if it wasn't, but, as a matter of fact, one is just as true as the other?

A. I should think so.

Q. While the shipper would take advantage of the local rate, the fact remains that if each local rate is just, a through rate higher than the sum of those general rates must necessarily be unjust?

A. I should say so.

Q. So that is of no advantage in determining whether or not a particular rate is just in itself or not, is it?

A. How is that?

Q. That consideration is of no advantage in determining as to whether or not a rate is just in itself?

A. Well, what consideration, Mr. O'Brien?

Q. The fact that the through rate would have to be no more than the sum of the local rates.

A. It would have a very large effect in considering the effect of the local rate.

Q. Does it have any effect in determining whether the local rate is just in itself or not?

A. Oh, I see what you mean. No, I don't suppose it does.

Q. Is there any way of escaping the final conclusion that the test always must be the propriety of the rate, in and of itself, as applied to the traffic which it covers?

A. No, but I would modify that to this extent, that where you have a great interstate railroad, you have got to consider the propriety of the rate, in and of itself, not only in its effect on your little commonwealth here, but what the effect is going to be upon the great structure of rates of your big railway which is trying to serve not only this commonwealth but all

others; on the broad ground of public policy that you can't conduct the affairs of the state of Minnesota by building a fence around them and doing business in Minnesota without any regard to the business that may pass between points in Minnesota and other states or that may go all the way through; it is an impossible commercial situation that your supposition, carried out to its last analysis, leads you to, it seems to me. They must be inevitably considered, not only in and of themselves, but they must be considered on the inevitable effect on the property as a whole.

Q. In other words, the theory or claim that the State of Minnesota has the right to fix rates solely with reference to traffic within the state of Minnesota, is what you call a commercial impossibility?

A. Well, it comes pretty near that in my mind.

Q. And the time has come when it must be determined whether or not the State can exercise lawfully any such power as that?

A. Very close.

Q. And that is true because the disturbance of the rates in Minnesota of necessity will disturb the rates sooner or later upon the entire System?

A. Yes, sir.

Q. In other words, yon can't change any rate without disturbing more or less the relation which all the rates bear to each other?

A. That is the tendency and the fact, the way business has been built up and interwoven.

Q. And, of course, that applies to an interstate rate as well as it does to an intrastate rate?

A. Yes, sir.

Q. And therefore, if the federal government should change the interstate rates, that change would have a bearing and force a change upon state rates?

A. Yes, sir.

Q. Now, if the federal government has no authority to burden or to change or to fix rates affecting the purely internal commerce of a state, and if by adjusting its interstate rates it would have that effect upon the internal commerce of the state, it would be an unwarrantable exercise of power by the federal government, would it not?

A. Well, my own opinion is it would not.

Q. It would be an exercise by the federal government of a power to regulate the internal affairs of the state?

A. Yes, but it would have to do it incident to its power to regulate the external affairs.

Q. And so, if, as a matter of fact, the federal government did not have that power, we would be in a condition in which the state could not regulate internal commerce because it would affect interstate business, and the federal government could not change rates upon interstate commerce because it would affect internal commerce and there would be no power to fix the rates?

A. If the condition of which you speak existed I suppose that would be the result.

Mr. HOW: And if his view of the law is correct?

WITNESS: It would be quite a happy day for us railroad people.

Mr. O'BRIEN: Yes, not only happy but profitable.

By Mr. DURMENT:

Q. There are one or two things that I would like a little information on, that Mr. O'Brien has not brought out, if I may inquire. You said, Mr. Elliott, that the rates in Minnesota were different from those in Oregon and Washington. I assume, though you didn't say it, that the rates were higher, ordinarily, in Oregon and Washington than in Minnesota.

A. That is correct.

Q. On what do you base or justify the charge of higher

rates in Oregon and Washington than in Minnesota?

A. The rates in Oregon and Washington are higher than those in Minnesota because that is a newer country, the general topography of the country is different, the general scale of living by everyone is different, all of the commercial conditions that surround the conduct of all business are very different from what they are in Minnesota, just as some of the conditions here are different from those that exist in Connecticut or Indiana, and the rates have grown up there and been made by these forces that I have spoken of and by what Mr. Adam Smith used to call "higgling in the market," the freightmen and the shippers that talk back and forth and finally arrive at a basis of rates under which business will develop with a profit to the producer and a profit to the consumer and a profit to the transporter. Now, as that country gets older, it is probably inevitable that some of those rates will fall.

Q. Well, is there any fixed basis or relation between the Minnesota rates and the Washington and Oregon rates which determines the difference between the two?

A. No fixed basis, no.

Q. Then there is no relation between the rates in Minnesota and the rates in Washington and Oregon which fixes the difference between the two?

A. There is only the general relation that the communities have grown up from one end of the road to the other, one community with one set of rates and one with another, and they naturally say, "Well, if you are going to reduce John's rate, I think something should be done to mine, I don't necessarily say it should be the same as John's but if you take 10 per cent off of his, I think you ought to take 10 per cent off of mine; conditions have changed here somewhat, more people living here and more business going on, and, therefore, if it is fair to reduce in Montana it is fair to reduce in Idaho, if it is fair to reduce in Minnesota, it is fair to reduce in North Dakota."

Q. Then, if I get the right idea, it is this: That, in the course of time and the operation of the roads, the communities in different sections have adjusted their business to certain rates?

A. Yes, sir.

Q. And they have for a long period of time in one community done business in competition with other communities upon the basis that the rate in this particular community was thus and so and the rate in the other community which they competed with was thus and so?

A. That is substantially correct.

Q. And, consequently, when the rate is reduced in one community, the other community claims that they are put to a disadvantage unless their rate is reducer also?

A. That is right.

Q. And the necessity which your Road finds itself under to reduce rates in the second community, because of the reduction in the first, is a necessity which comes to satisfy the people on your road, and to preserve the relative influence of those communities in the commercial world, is it not?

A. And also to be wholly within the laws as to unjust discrimination between localities.

Q. Well, that covers the whole of it, doesn't it, including that?

A. That and the desire to so adjust our rates that we will have the maximum amount of commodities moving back and forth on our road, so long as we can figure out that the producer gets a living, the consumer gets a living and we get a living.

Q. Now, the rates, I believe you said before, are not made upon the basis of adding any fixed percentage or amount to the cost of the service?

A. They are not, no, sir.

Q. And, as I understand it, the roads have found it practical, if not necessary, in fixing rates to take into consideration

a good many things other than the cost of the service?

A. Yes, sir.

Q. Rates are fixed not only to bring a profit upon the cost of the service and upon the basis of the density of the traffic, but also with a view to equalising competitive conditions between different sections of the road, are they not?

A. Yes, sir.

Q. And also with a view to building up a sparsely settled country and providing a traffic for the future?

A. That is correct.

Q. And as compared with the cost of operation in one community or state, or cost of performing the service and the returns or profits upon that service, a rate in another community or state may produce a very much less return on the cost of the service than in the first community?

A. That might be possible.

Q. And the road, knowing that, would fix the rate in the second community in order that it might be settled up, and look to the future traffic to reimburse it?

A. They would do just as any business men would do who do things to extend their trade.

Q. It is true, is it not, that a road can, in actual operation, maintain rates for state hauls, that are entirely within the state, relatively much higher than rates made for interstate business in the same territory?

A. Yes, sir.

Q. Now, while you claim that if a state rate is made which would have the effect to make the sum of the locals less than a through or interstate rate, it would require a reduction of a through or interstate rate as a matter of practical operation, it is not true, is it, that the making of an interstate rate which is less than the sum of the locals would require, as a matter of practical operation, a reduction in any local state rate?

A. I wouldn't want to answer that quite as broadly as the

question. I think there might be cases where the effect of the interstate rate you speak of would bring down the local rate.

Q. But, as a rule, it would not be necessary, would it, as a practical matter of operation?

A. No, because I don't think the interstate rates are made in such a way as to create unstable conditions that would force the condition that you speak of.

Q. As a matter of fact, is it not true that usually the local rates for hauls entirely within the state are, relatively, considerably higher than the interstate rate hauls in the same territory?

A. I wouldn't say that they were the last few years considerably higher; some of them are higher, some of them I think are even lower.

Q. And you still continue to do business with them lower?

A. Oh, yes.

Q. I think you said, a minute ago, that that was just what could not be done; that if you had a lower state rate than what would be the sum of the locals, that is, if you had local rates such that the sum of the locals would be less than the interstate, that you could not maintain the interstate rates, that you would have to reduce them.

A. Well, then, I must have misunderstood the last one or two questions.

The Reporter here read the last two questions.

WITNESS: I think that answer, Mr. Durment, perhaps should be modified. What I had in mind was that I think some of the computations that I have examined indicated that some of the proposed rates in Minnesota would be less than our proportion allotted to Minnesota of the through rates.

Q. Yes, but I was asking you with reference to the rates which the Road had voluntarily put in and operated under.

A. Just repeat your question once more, will you, please?

The following question was read: "As a matter of fact, is

it not true that usually the local rates for hauls entirely within the state are, relatively, considerably higher than the interstate rate hauls in the same territory?"

A. Well, you mean the total of the rate, or the rate per mile?

Q. I mean that the rate or portion of the rate which your road would get for an interstate haul (say, for instance, 150 miles of which was in Minnesota), would be considerably lower than the rate you would get for the same identical haul over the 150 miles in Minnesota.

A. Well, in some cases the rate would be lower, and in other cases I think it would be substantially the same.

Q. Would it ever be higher?

A. I think some of these computations that I have seen indicated that the proportion would be higher, creating a very unstable condition, which, if those figures are correct, will force us to reduce our through rates.

Q. Either myself or you are at the wrong end, I don't know which.

A. I guess we both are.

Mr. How: I think you are at criss-cross.

Q. We evidently are not considering the same thing. Now, referring to the rates which have been in effect—not the rates that the State proposes to put into effect, but the rates which the roads have established, themselves, for hauls in Minnesota—is it not true that in some cases the roads, themselves, for hauls in Minnesota, have fixed a lower rate than would be the road's proportion of a through rate fixed by the Interstate Commerce Commission or by the road under the jurisdiction of the Interstate Commerce Commission, for the same identical haul in Minnesota?

A. As I understand your question (let me state it in my own way) it is this: that is it not a fact that we get a proportion of a through rate on a shipment originating in Minnesota and destined to some point outside of Minnesota, a lower aggregate

rate, than we obtain for transporting the like commodity wholly within the state?

Q. No, it is just the reverse: Are there not cases in which you get a lower rate for the state haul than your proportion of the through rate or the interstate haul over the same line in Minnesota?

A. I don't know, Mr. Durment; I don't feel competent to answer that.

Q. Now, this may be repetition, but I want to make certain that I get your view of it, because to my mind it is important in considering this question. If I have correctly understood your position with reference to the necessity for a change in rates in one community because of a change in another community, it is this: The railroads have, through a course of years, been adjusting and fixing rates such as they thought were fair within themselves, fair as between different communities, towns, counties and states, and such as would be fair to the business interests that had been built up along the line and enable them to do business without any one community having any undue advantage of another, and at the same time such as would assist to build up the country or settle up the country and develop the traffic in the country through which the road runs; and that as a result of that, rates have been fixed which were, as between these different sections and communities and with reference to these various things, reasonably fair, and business had become established upon the basis of those existing rates and their relations one to the other, and for that reason, whenever you make a lower rate to any one community, you necessarily disturb the rate as to all these others, and in the course of time, in order to bring about the same relation of equality, and not only equality as to competition and opportunities and the like, you have got to make something of a similar reduction in the other points, in the rates at other points?

A. Yes, sir, in a general way, I think that is a fair statement of my view of the interweaving of rates.

Q. Now, you have said here that terminal rates—by which I understand you mean rates between what are known as two terminal points—are ordinarily less than rates for the same distance between points not terminal.

A. Well, I mean, Mr. Durment, by the words terminal rates, what we call tariffs from the large distributing centers; I think they are sometimes known as jobbers' tariffs, where the merchandise is distributed in large quantities, like St. Paul, Minneapolis, Duluth, Superior,—and I think there are some in very small jobbing points now in Minnesota. The smaller jobbers feel they are entitled (and they are, probably) to the same general distributing rates that the larger jobbers are, and in my experience those things gradually grow. In the beginning, the merchandise was distributed, very largely, from the Atlantic seaboard; then St. Louis and Chicago developed and it was distributed from those places; then Kansas City and St. Paul, and it was distributed from those; then Fargo, Grand Forks and other places became distribution centers.

Q. Well, upon what theory is it that the roads will make a less rate between these points that we have spoken of as terminal points and that you have just explained for the same distance than you will for the same distance between points of a different character?

A. Well, you get a very much greater volume of business from these so-called distributing points; you generally are bringing in commodities to the distributing point for the consumption of the people who live there, that give you the benefit of cars to be loaded out; you have got a better machinery for doing the business. If St. Paul will buy a lot of coal in Duluth, for example, why, it is obviously good business, if you can, to load the cars back with flour; or if Minneapolis buys grain, we would naturally want to load the cars back with

agricultural implements or merchandise.

Q. Then it is not due to the terminal charges (that is, the charges of loading and unloading) being greater at the distance points than at the terminal points?

A. That is one of the reasons, yes.

Q. But that is a very small reason, isn't it, in comparison?

A. Well, it is an important factor.

Q. Are there any other important factors than that, except the volume of traffic out and the opportunity for reloading your cars back?

A. Well, you get, as I say, the more prompt movement of all yours cars, you get better use out of your facilities, you get a greater use of your tracks, and have this large investment in your big terminals and the more you can use them the less the charge is against your business or against a unit of business by reason of that large use.

Q. I understood you to say to Mr. How that you did not mean to say that each rate fixed by the act of the legislature involved in this action was in itself unremunerative or unfair?

Mr. How: For every haul in the state?

Q. Yes, for every haul in the state; but that on the whole, considering the return that these rates would bring and their effect upon other rates and your through business, they were unremunerative. Now, have you yourself examined the reports of the traffic over your road and applied these rates to them in such a way that you are prepared to say whether or not the rates, as a whole, would be unremunerative if they could be applied to Minnesota hauls without having any effect upon other rates?

A. No, sir, I have made no such computation or calculation.

Q. But, in your opinion, the putting in of these rates in Minnesota would necessarily cause a reduction in interstate rates or interstate hauls?

A. I feel that, on broad general grounds, the putting in and continuance even of the low rates that are now in, will, without doubt, jeopardize our rates in many other places, and in that way it will diminish the earning power of our Company so seriously that the owners and management are confronted with a very difficult situation. This judgment is arrived at by study of the whole situation and from general experience.

Q. What I wanted to make clear if I have the right understanding of it is this: You have expressed the opinion here that these rates, as a whole, would not be remunerative, and, in stating the reason for that, you stated as one of the reasons the effect it would have upon rates other than those prescribed by the act.

A. Yes, sir.

Q. And what I wanted to make clear is that you have not made any investigation or computations so that you are able to state whether they will be remunerative or not if they could be applied only as the statute applies them without affecting other rates.

A. No, I have made no such computation.

Mr. DURRENT: I think I forgot to offer in evidence, on Friday, Defendants' Ex. NN—Elliott. I desire to offer it in evidence at this time. If it was not done, it was understood that it should be.

Mr. HOW: I object to it as immaterial.

The MASTER: It is in evidence.

By Mr. HOW:

Q. If I heard your testimony accurately, you testified that there were in effect larger local rates than interstate rates in the same territory. Does that mean that merely because a haul (other conditions being equal and the distance being the same) crosses a state line the rate is lower than if it does not cross a state line?

A. Oh, no.

Q. What about your distance tariffs for a hundred miles placed in any way so that it will cross the line between Minnesota and North Dakota before the putting in effect of the rates complained of?

A. We had substantially the same basis up there.

Q. Then, as I understand it, the existence or non-existence of a state law crossing your line of haul, is not considered a condition which warrants a difference in rates?

A. It is not.

Q. And has not been so considered and has not been so used?

A. It has not.

By Mr. DURMENT:

Q. The thing I had in mind when I asked the question Mr. How has reference to in his re-direct was this,—and am I not right in it?—that while, as you say, the lowering of a state rate may, as a matter of practical business operation, necessitate the lowering of an interstate rate so that the through or interstate rate will not be greater than the sum of the locals, the changing or lowering of an interstate rate does not, at least to anything like the same degree, necessitate the reduction of a purely state rate?

A. No, I think it does not. Perhaps where we got into confusion was in what you meant by territory and what I meant by territory in framing my answer. We have, we will say, a low interstate rate from Duluth to Winona, if you like, or—Winona is still in Minnesota, isn't it?

Q. Yes.

A. Well, then from Duluth to some point outside of Minnesota, and that rate would be lower relatively than the rate from Duluth to Detroit, and yet in the word "territory" I considered it all in one territory. Now, you might have considered the "territory" differently, I don't know.

By Mr. How:

Q. If the Interstate Commerce Commission should disrupt the parity of rates between Superior and Duluth by lowering the rates from Superior to points in Minnesota, what would be the effect, if any, upon the rate which the Railroad would reasonably charge from Duluth to points within the state of Minnesota?

A. Well, we would have to make the same rates from Duluth to points in Minnesota that the Commerce Commission ordered from Superior to points in Minnesota.

Q. There being a parity of rates from the Twin Cities or the Head of the Lakes to Moorhead and Fargo, if the Interstate Commerce Commission shall reduce the rates from the Twin Cities or the Head of the Lakes to Fargo, what if anything will be the necessary result upon the rates which the road may charge from the Head of the Lakes or the Twin Cities to Moorhead?

A. You would have to reduce the rates to Moorhead to at least as low as the rates to Fargo.

Q. And why, in your judgment?

A. Because you could not justify maintaining a higher rate to the intermediate point than to the more distant point where the conditions are so nearly similar as they are in those two cases.

Q. On the ground of discrimination?

A. On the ground of unjust discrimination between localities.

By Mr. DURMENT:

Q. Then you could not maintain those rates to Moorhead different from those to Fargo because it would be unjust discrimination, you say. Do you mean by that it would be in violation of law?

A. Well, it would probably be in violation of law, and it would certainly be in violation of commercial fair treatment of

two communities that have grown up there with substantially the same conditions.

Q. I don't know that I quite caught Mr. How's question, but as I understood it it was whether, if the interstate rate from Superior and Duluth to Fargo was lower than the state rate from Duluth to Moorhead, you would be required to reduce the state rate from Duluth to Moorhead, and you said yes; did I get the question right?

A. That is right.

Q. And that would be because only of competition, or simply because you would consider it an unjust discrimination?

A. Why, I would consider it an unjust discrimination and an untenable position for a railroad management to take.

Q. But there isn't any reason why you couldn't do business and maintain those rates and charge a higher rate from Duluth to Moorhead than you would from Superior to Fargo, is there?

A. The only reason would be that within a comparatively short time you would dry up the town of Moorhead because everybody would go to Fargo.

Q. Yes, but it would not lose any particular amount of business for the Road, would it?

A. Well, it might. You can't tell as to that. Two communities do more business, perhaps, than one.

Q. The only reason why the Road could not do it would be that it would tend to injure or destroy the business of Moorhead, isn't that it?

A. Well, that is the chief reason, and it would be against the interest of the Railroad to destroy any community on its line.

Mr. HOW: That is unjust discrimination, isn't it?

WITNESS: Obviously.

Mr. DURMENT: Well, it wouldn't be unjust discrimination under the federal law; it might be in Minnesota, I don't know what the statute here is.

Mr. How: The State will take care of itself in that. I shall always admit that, from the beginning to the end of this case, that the State has full power to regulate rates for its own protection so long as they don't interfere with interstate rates. I hope I shall always admit that.

Mr. DURMENT: Well, I hope you will.

Mr. How: Well, I am a pretty good fellow to admit that.

Mr. DURMENT: You are always a pretty good fellow, Jed, I don't have any kick on your good-fellowship at all.

Mr. O'BRIEN: We will get the legislature to give you a sword for that!

Adjourned until Tuesday morning, November 24th.

FEDERAL BUILDING, St. Paul, Minn., November 24, 1908, hearing resumed at 10 o'clock A. M.

OSCAR L. TAYLOR,
sworn on behalf of Complainant, testified:

By Mr. How:

Q. Please give your name, your age and your present residence, Mr. Taylor.

A. Oscar L. Taylor, age 50, residence 529 Portland avenue, St. Paul.

Q. How long have you lived in St. Paul?

A. Since 1882.

Q. And what is your occupation at present?

A. Engaged in handling real estate.

Q. How long have you been in that occupation?

A. Continuously since arriving here, in February, 1882.

Q. What is the general nature of your business?

A. Handling real estate on commission, and buying and selling on firm account, a general line of real estate transactions, also some mortgage loan business.

Q. Has it been a part of your business to make valuations of property for mortgage loans and other purposes?

A. I have frequently done so.

Q. Has it been a part of your business to keep yourself posted with regard to real estate values in the county of Ramsey?

A. That is considered a very essential element of the business, and I have tried to familiarize myself with values, as much as possible.

Q. What, if any, experience have you had in acquiring properties in Ramsey county for railroad uses?

A. I have had quite a large experience in that direction.

Q. And during what period of time in the past?

A. Off and on, for the past fifteen years, I should say.

Q. You were employed, as I remember it, in the fall of 1906, by the representatives of various railroads, for the purpose of appraising railroad properties in the county of Ramsey, as I understand it?

A. Yes.

Q. And, conjointly with Messrs. Read and Watson. Will you state the method of your employment, who employed you, and under what circumstances?

A. Mr. Thomas Cooper first sent for me. I went down to his office; he told me that it was necessary to have a general appraisal of the terminal properties, or the properties of the various railroads, within the city and adjacent to the city or St. Paul; also informed me that a similar appraisal would be made in Minneapolis and Duluth, and asked me if I could give him any suggestions as to men fitted to join with me in making such an appraisal. I suggested the names of Mr. Watson and Mr. Read. Mr. Cooper gave me a few minutes' talk on the general theory of what they wanted, and asked me to meet the various other right-of-way men of the other railroads, at his office, at a day two or three days from that time; I did so, and

a general discussion of how this appraisal was to be carried on was held, Mr. Cooper being the principal spokesman, several other men representing other roads giving their ideas of what sort of an appraisal should be had; and, having been given these instructions with the other members of the committee we took up the question of making this appraisal.

Q. Were you advised what purpose was in view in making the appraisal, what purpose on the part of the railway representatives?

A. Mr. Cooper told me that it was for the State. He further told me that the State had employed a man who had had some experience in railroad right-of-way to make a general appraisal, the purposes of which I knew nothing about, nor did I inquire. This man had admitted to the State authorities, as I was told, as well as to Mr. Cooper, that he had not familiarity with the values of city property. This was Mr. Morgan to whom I refer. Mr. Morgan had stated that he was familiar with farm lands and outside properties in a general way and could intelligently make an appraisal of property in the state of that class, but he felt wholly incompetent to pass upon the values in the three large cities of Duluth, Minneapolis and St. Paul, and had informed the State authorities that they must arrange for some other method of obtaining the values in the cities, therefore, in the conference between the State authorities and Mr. Cooper, this suggestion of calling in these real estate men came up and led to the appointment of this commission, on the theory that Mr. Morgan was not sufficiently familiar with values in the cities to carry on the same sort of appraisal that he was attempting on the outside property.

Q. What were you advised with regard to the character of the valuation desired; that is, whether at a high valuation, a low valuation, or a fair valuation in your opinion?

A. Well, it was reiterated by Mr. Cooper and Capt. Woodman, and various other people, that the object of this appraisal

was to determine a fair value of the railroad properties in the cities.

Q. Now, you and your associates undertook this valuation soon after your employment, as I understand it?

A. Yes, very shortly.

Q. What was your method of procedure? Just state that briefly, because doubtless your testimony will be the same as the others' in that regard.

A. Well, we obtained a large room where we had some big tables and spread out all these maps, and we spent a couple of days, I think, in a general discussion of the railroad situation and a comparison of the properties owned by the different railroads, discussing freely between ourselves relative merits of different railroad properties, and attempted to make no figures until we had thoroughly gone over the ground in a general way and outlined what properties were considered of a similar value belonging to the different roads, so that we could make sort of a general classification of them; and after going through the subject in that way, as carefully as possible, we began the dividing of the various properties into small districts, each one representing property of approximately the same class, so that we would give an average value of a certain price per front foot or square foot to all the property within those limits, and dividing each one of the railroads up into sections where it was possible. Certain of the lines lying immediately adjacent, the same figures were given to the different lines of road so far as value; a portion of the Northern Pacific and Great Northern lying side by side were subject to the same figures, and so on through; where they diverted, then we were obliged to let them stand on their own merits, didn't have any comparison between them and others.

Q. You did make the valuation in districts; were those districts arbitrarily fixed by you, or were they adopted from the divisions made by the various railroad officials?

A. No, they were arbitrary.

Q. On your part?

A. Yes.

Q. In making a valuation of so much per square foot in any district, what was your opinion with regard to the property in that district, that it was all, and invariably, of the value set down as the value of the district, or was that merely an average?

A. That was an average.

Q. Not intended, then, to apply to every foot in any district?

A. Not absolutely; it was somewhat elastic.

Q. In making your valuations, Mr. Taylor, what elements did you take into consideration for the purpose of determining the amount which you set upon the property and which you included finally within your appraisal and report?

A. A number of elements that enter into an appraisal of that sort, each entitled to a certain amount of consideration: Knowledge of individual sales in the district is an element always deserving of consideration; returns from an income-bearing point of view on property similarly located and adjacent always carry a certain amount of weight; some of these properties had that element apparent; the various condemnation proceedings, if any, that have been held in abutting property or property of a similar character, is one element; the physical situation, its proximity to improvements of one sort and another, railroad improvements, its proximity to other valuable property, wholesale property or manufacturing property—all those elements tend to make up the general scheme of value.

Q. Will you describe the topography of the city of St. Paul and its availability, or rather the property which is fairly available for terminal purposes, briefly, because that has been done before and I think perhaps is understood, but I want to keep it in mind in connection with your testimony.

A. The so-called railroad terminal properties in St. Paul are peculiarly located as compared with most cities, the topog-

raphy and general situation being quite different from a flat city. One of the things that every railroad seeks to obtain, if possible, is an entrance to a city which will avoid what are known as grade crossings; they are always a menace to property and to life, a source of constant suits and various other litigation; and St. Paul is peculiar inasmuch as, being situated on the river, everything to the south is eliminated as a means of access except over railroad bridges. There is accessibility from the river, coming from the south, to a limited extent. Were an attempt to be made to widen that entrance, it would be expensive, owing to the character of the bluffs adjacent to the river. There is a gully, known as Phalen creek, and another gully, known as Trout brook, each of which runs through the city, forming a natural entrance, all below grade, which eliminates the grade crossing and also permits of entering from the northern and easterly portion of the city at a minimum of expense. Those entrances were appreciated early in the railroad development of St. Paul, and a spot or district which would admit of the use of those various entrances and still be adjacent to the commercial end of the city, connecting also with the river traffic, was naturally of small area and was a fixed spot because those conditions could not exist anywhere except in that one particular district; therefore, the property in that particular district was extremely valuable.

Q. For railroad purposes?

A. For railroad purposes.

Q. Of what value, in your opinion, and based upon your experience, is the consideration paid for transfers of isolated particular small tracts of property in the neighborhood of property which you appraised for these railroad purposes?

A. It is only a slight element, in my opinion, of the value of railroad terminals. Everything that tends to show any value in the district has a certain amount of weight; but you cannot be guided at all, in a positive way, or make it a basis of

your values, of a railroad terminal.

Q. What has been the general condition of the real estate market in St. Paul for the past fifteen years, and in Ramsey county?

A. It has been extremely depressed, almost without exception. Here and there there has been some little movement, owing to an unusual demand for some special purpose in some district. The last two or three years there has been a strengthening of values and a general stiffening up, but it has been a source of surprise to many people why there has not been a greater awakening of values, but an extreme lethargy has prevailed in all classes of property for a considerable period back.

Q. Well, of what character, in general, in your experience, has been the sales of real estate that have been made in Ramsey county generally, within the past fifteen years; that is, whether pursuant to an active demand, or to a necessity for sale by the owner, forced sale, practically?

A. Well, there has been no stiff market at all. There have been, in the first place, a great many mortgage foreclosure sales, that is, sales of property acquired under mortgage foreclosure, of all classes of property, from a high-class business property down to the cheap lots in residence property.

Q. How about receivership and bankrupt sales, have there been some of those?

A. A large number; in fact, five or six years ago, many remarks were made by sagacious men about the town that there was no use attempting to expect a real estate market until the various bankrupt estates that were on the market had been closed out, because nobody could compete with those bankrupt estates, and they were scattered far and wide over the city, having a very decided tendency to hold back a natural increase as long as the moderate demand was easily supplied by those bankrupt estates.

Q. Of what value, in your opinion, was the price obtained

in sales of real property by bankrupt estates, mortgagees who had acquired property under foreclosure, and assignees in insolvency, in various sections of the county of Ramsey, in determining the value of the railroad property which you appraised? How much value, whether great or small?

A. Well, those bankrupt sales, the prices realized from those bankrupt sales, influenced me very slightly in forming an opinion of the actual value of these railroad terminals. Many of these bankrupt sales, were auction sales for cash, and the prices realized were so low that they did not deserve to be taken into consideration as a positive criterion of value.

Q. On what, in general, is the value of real estate based or predicated?

A. The value of real estate is dependent on the uses to which it can be put, the property having very limited possibilities of use having a much lower value than property subject to various uses. There are certain kinds of use that, although it may be limited and property can only be used for that one purpose, if the purpose is of the highest sort, that property may have a higher value than some other property for which the uses are of a more trivial character.

Q. In a city of the size and importance of St. Paul, and of the topographical character of St. Paul, how, in your judgment, does the value of a railway use for entrance and terminal purposes compare with any other use to which property may be put, compared with the value of property which can be put to any other purpose?

A. Well, railroad use, desirability for terminal facilities, in a city, is one of the highest usages that can be made of property. There are a few things that would be perhaps classed as a higher use, the very best retail property or some of the finest wholesale sites, but railroad usage, in the city, is one of the best purposes to which property can be devoted, and railroads are willing, and expect to pay, for such proprety up in the high class

of real estate.

Q. And do you consider that that view or that condition is strengthened in a city of the topographical character of St. Paul over what it would be in a flat city?

A. Very decidedly, because the possibilities are actually limited, the areas are restricted, and when you find restricted areas that must furnish the terminal facilities, that property immediately becomes of the highest price because they cannot get along without it.

Q. The property of the Northern Pacific consists of a continuous (necessarily continuous) large holding from its terminal properties near the foot of Fourth street, say, to the city limits, which are coterminous, perhaps, with the county limit. Will you state what effect the fact of this holding being continuous and the fact that, in order to make it continuous, every integral part must be acquired by the Railway Company, had upon your determination, if it had any effect, upon the value with regard to each integral part of the property?

A. In any restricted district, or in any locality that is improved, developed, built up, the larger the piece or tract of ground, the greater its proportionate value, as applied to railroads, especially. The small pieces here and there may be offered for sale at a price proportionally much less than the entire holding is worth, owing to the fact that it is difficult to acquire certain portions of any such large tract, and, as I first said, the larger the piece the larger its proportional value in a restricted or developed district.

Q. In cross-examination of one of the witnesses, he was asked if he meant by that to say that property dealt in at wholesale would realize larger prices than property dealt in at retail, —apparently intended to elicit something upon which to base an argument that the continuous property, right-of-way and terminals, of the Northern Pacific Railway Company was less valuable than if it were split up into pieces and disposed of,

tract by tract; what is your view in regard to that?

A. This question of wholesale and retail prices has very slight application in regard to a railroad right-of-way. It is a well-known fact in regard to ordinary commodities, even that of real estate, that one can buy cheaper in a wholesale way than he can in a retail way, and yet, in railroad terminals and railroad right-of-ways, there is an added value over the value of the single adjacent lots, which are limited in their possibilities. One single lot in a vicinity has no value as railroad property except in conjunction with others, therefore it may be that its very highest use is eliminated, and its price will be based on its use. Now, then, this question of wholesale value in a railroad terminal, perhaps I could illustrate by the suggestion of a stick of timber. We take a large stick of dimension timber having an unusual length and unusual size, and its value, proportionally, is very much larger than what it would bring if cut into small pieces of lumber of any character; it has possibilities of making shingles or siding or rough boards or two-by-fours or anything else, but above and beyond everything else. it has this one possibility of its highest use, and the larger you get the stick of timber the greater the proportionate value until you can find a place where that particular stick of timber would be worth five, and perhaps ten times, what you could get out of it by sawing it up into boards of any description.

Q. For bridge timbers, etc.?

A. Because there are only a few pieces in the country that can be obtained with which to do that particular piece of work. The same thing applies, absolutely, to railroad terminals. In a city like St. Paul, there are only a few pieces, and when you have a piece of property that has those possibilities, there is almost no limit to its value.

Q. Did you make a return or report to Mr. Cooper, for the Northern Pacific Railway Company, of what you then consi-

dered to be a fair valuation, based upon your best knowledge and experience, of the railroad properties of the Northern Pacific Railway Company within the county of Ramsey?

A. I consider those values eminently fair, and should another railroad of similar magnitude to the Northern Pacific attempt to duplicate the same terminal properties or properties to cover the same facilities and do the same work, I doubt if they could be acquired for anywhere near the figure set in that appraisal.

Q. Has there been any change in your views with regard to the fairness and justness of that valuation since it was made and reported?

A. No, I have had no reason to change it in the slightest degree.

CROSS-EXAMINATION,

By Mr. O'BRIEN:

Q. I understand, Mr. Taylor, that this appraisement was made of this property as railroad property, used for and available for that purpose; is that correct?

A. Well, the property was put up to this committee knowing it to be railroad property and we were asked to make a valuation of that property.

Q. Can you answer that question—

A. Not for railroad purposes.

Q. —yes or no?

A. Please repeat the question.

Last question read.

Mr. HOW: If you don't understand—

WITNESS: Well, I understand the question, but it is hardly a fair question to answer yes or no to.

Q. Can you answer it yes or no?

A. Why, I can say either yes or no, but neither will be an intelligent answer to the question.

Q. Well, then, if you did not value this property and put

a value upon it as property available for railroad purposes and as property acquired and used for railroad purposes, of what value is this long discussion that you have entered into for the purpose of proving the amount of railroad property in St. Paul, the necessity for large tracts of property for railroad terminals, and the fact that this property cannot be duplicated for railroad terminals in the city of St. Paul? Now, you can take either horn of the dilemma you want to. Did you value it in that view or did you not?

A. Yes, when you phrase it that way, I could answer it and it seems to me the answer would apply.

Q. Well, answer it.

A. I would say that we did, yes.

Q. You have had no consultation with Mr. Morgan? You referred to Mr. Morgan at one time here in this "conference" that you had with Mr. Cooper—You had no conference with Mr. Morgan?

A. Why, a personal conference with Mr. Morgan.

Q. What I mean is you received no direction from Mr. Morgan?

A. No, no directions. We discussed the general situation with him a little.

Q. You followed your own views?

A. Oh, absolutely.

Q. And came to your own conclusion?

A. I had a talk with Mr. Morgan, either while this appraisal was going on or shortly after it, I won't be positive which. That is the only time I remember any discussion.

Q. Of course, in the last analysis, the market value of property is made up from a consideration of what the property will sell for upon the market?

A. Well, not quite, as applied to railroad terminals; my criterion of value is what it would cost to duplicate the property.

Q. Well, I am speaking now of market value of property generally.

A. Of property generally, yes, but not railroad properties.

Q. The best test of what property will sell for in an open market, in sales which are not forced, is a long series of results, is it not, the actual facts covering a long period of time?

A. For general purposes, but not for this, and there is absolutely no comparison between the two and no relation exists.

Q. I said for general property.

A. Yes, for general property.

Q. For general property?

A. Yes, I will admit that.

Q. If you wanted to ascertain what the general market value of property was in the city of St. Paul for various periods of time you would ascertain that by ascertaining what that property had sold for in the market, or what property had sold for generally in the market, during those periods?

A. Yes, as applied to certain classes of property, but absolutely not as applied to railroad property.

Q. Well, now, you have made that exception three times.

Mr. How: I think he is justified in qualifying his answer each time.

Q. If you wanted to ascertain what the general market price of property in Kittson's addition in this city had been during the year 1870, during the period from 1870 to 1880 and from 1880 to 1890, you would ascertain that by the prices generally obtained during those periods and at those particular times, would you not?

A. The general value *for ordinary purposes;* always bear that in mind.

Q. Then if you considered that the value for railroad terminals was different from the general value, you would ascertain the general value and make that addition to it?

A. Mr. O'Brien, I would only draw comparisons between

a railroad terminal property and another property of exactly the same general character. Then you can form comparisons; otherwise you never get anywhere on comparisons. With isolated sales you could take back the whole history of the city of St. Paul, you wouldn't get anywhere with it. When you can show what a similar property has sold for, that is some criterion of value.

Q. Now, of course, when you speak about property being of incalculable value, you realize that it is possible for values to be placed upon property so as to make that property unavailing for that purpose?

A. To be so high?

Q. Yes.

A. Yes, where it would be almost prohibitive to do business with.

Q. You know that you would not expect wheat, sold for fifty cents to a dollar a bushel, to be transported to market over diamond rails, don't you?

A. Wouldn't expect it. These values are about a fifth of the values of Seattle and kindred western towns for terminal facilities. You are going to bar out the whole west coast if—

Q. Have you ever compared the values of wholesale properties in St. Paul with the values of similar property in Seattle?

A. Somewhat so.

Q. They run about one-fifth in St. Paul, also, don't they?

A. Very much below those in Seattle.

Q. So that you still find a relation between the general property in Seattle and the railroad terminal property?

A. Yes, but we are talking about putting it at a prohibitive point where it was like carrying the cars on diamond rails.

Q. Now, most of this terminal property that you have been speaking of is peculiarly adapted for that purpose, is it not?

A. Quite a large proportion of it is, yes.

The MASTER: From the statements made by counsel, the

Master is of the opinion that the taking of testimony in this case, as well as in the other case in which testimony has been taken, will be expedited if we now take an adjournment until Friday morning, November 27th, at 10 o'clock.

An adjournment was taken accordingly.

FEDERAL BUILDING, St. Paul, Monday, November 30, 1908. The hearing in the Northern Pacific case was resumed at 10 o'clock A. M.

JOHN B. BAIRD.

sworn on behalf of Complainant, testified:

By Mr. How:

Q. Will you give your name and present residence, Mr. Baird?

A. John B. Baird, St. Paul.

Q. What is your present occupation?

A. General freight agent of the Northern Pacific Railway.

Q. And how long have you been in that position?

A. About five years.

Q. What has been your experience in connection with the freight department of railway companies?

A. I have been connected with the Northern Pacific Railway for twenty-five years as rate clerk, chief clerk and assistant general freight agent, and during the past five years as general freight agent.

Q. What have been and are your duties as general freight agent?

A. General supervision of rates and tariffs.

Q. And over what portion of the System of the Northern Pacific?

A. Over the entire line.

Q. What were your duties as assistant freight agent?

A. I had practically the same duties so far as the rates and the preparation of the tariffs were concerned.

Q. And as chief clerk?

A. As chief clerk I had general supervision over the preparation of tariffs and the correspondence with reference to rates and other matters.

Q. What opportunities have you had, in the performance of your duties with the Northern Pacific, for familiarizing yourself with rates in general and in detail, over the whole Northern Pacific System?

A. It has been necessary, in the positions that I have occupied, that I should be familiar with the general basis of rates over the entire System.

Q. What opportunity have you had with regard to familiarizing yourself with rates in general upon other systems west of the Missouri river?

A. It has been necessary that I should be familiar with the general basis of rates in effect over other lines in the same territory.

Q. What are the geographical limits of the so-called grain-field on the eastern end of the Northern Pacific System?

A. The grain-fields on the eastern end extend from Minneapolis to practically the North Dakota-Montana state line.

Q. How about Duluth, north of Minneapolis, from Duluth west? What I am trying to direct attention to, there is no grain for some distance west of Duluth.

A. On the line between Duluth and Staples, Minnesota, and between Duluth and Pine City, on the St. Paul & Duluth division, and for a short distance in western North Dakota, what is known as the Bad Lands, there is practically no grain raised or shipped.

Q. What parts of your System, main line or branches, or both, go through this grain-field?

A. All of the main line and branches except that portion

which I have described between Duluth and Staples, and between St. Paul and Pine City on the St. Paul & Duluth division. The branches west on the main line from Minneapolis to Staples, and west of Staples, all traverse the grain-fields.

Q. From what stations are substantial quantities of grain shipped on the Northern Pacific? I am confining my inquiries, at present, to the eastern portion of the System.

A. From practically all of the stations in the territory described.

Q. And to what points of destination is grain in general shipped?

A. To Minneapolis, Duluth and Superior.

Q. At what distance on your lines, from Minneapolis and the Head of the Lakes, are the farthest substantial points of shipment of grain?

A. About 600 miles.

Q. That is in North Dakota?

A. In North Dakota. There are some shipments from points in Montana, in the irrigated valleys of Montana, but the shipments of grain from Montana are confined to a few points.

Q. But in the grain-field that you have described, I understand the shipment of grain is practically universal from all stations?

A. Yes, sir.

Q. How do the conditions attending the transportation of grain compare, as between the different points of shipment in Minnesota and North Dakota, in this field?

A. The conditions are practically the same, except as to distance.

Q. How do conditions vary as between local and interstate hauls of grain; that is, whether or not the point of origin and destination is within the same state, or the point of origin in one state and the point of destination in another?

A. There is substantially no difference in the conditions.

Q. Where do the shipments of coal on the eastern end of your System originate in general?

A. At Duluth, Minnesota, and Superior, Wisconsin.

Q. To what points on the eastern end of your System are those shipments destined?

A. The distribution of the coal from those points is general throughout all of the territory east of about Jamestown, North Dakota.

Q. Does that apply to both hard and soft coal?

A. Yes, sir; but more particularly to the hard coal.

Q. What different conditions, as regards transportation, exist as between the various points of destination of this coal?

A. There are no different conditions.

Q. Whether the points of destination be in Minnesota or in North Dakota?

A. No, sir.

Q. What conditions, if any exist, which justify a higher rate per mile for a haul of coal after it crosses the line between Minnesota and North Dakota?

A. There are no different conditions; in fact, the volume of traffic from and to points 100 miles beyond the Minnesota-North Dakota line is heavier than for the first 100 miles east of the line.

Q. Where do shipments of lumber on the eastern end of your System originate in general?

A. At Minneapolis, Duluth, Cloquet, Little Falls, Frazee and Crookston. The shipments, though, from Minneapolis are comparatively light.

Q. What is the principal point of shipment among those that you have named?

A. There is probably more shipped from Cloquet and Little Falls than from any other point.

Q. Where is that lumber carried by the Northern Pacific?

A. It is distributed through the agricultural section in

Minnesota and North Dakota, except that there is a large portion of it which cannot be marketed in that section and is sent East via Duluth or Minnesota Transfer.

Q. Is any of it distributed into Wisconsin?

A. A comparatively small portion of it, if any.

Q. How do conditions of transportation differ, as between different points of destination of that lumber, in Minnesota and North Dakota?

A. Except as they are modified by competitive or commercial conditions, the conditions of transportation are substantially the same, whether destined to a point in Minnesota or to a point in North Dakota.

Q. Where do shipments of livestock on the eastern end of your System originate?

A. At practically all of the stations west of Minneapolis and Duluth, in Minnesota, North Dakota and Eastern Montana.

Q. Where is that livestock carried in general?

A. Principally to South St. Paul and Chicago.

Q. The Northern Pacific brings it to the Minnesota Transfer?

A. To the Minnesota Transfer or St. Paul.

Q. How do conditions of transportation vary as between different points of origin of these shipments of livestock?

A. The conditions are substantially similar whether the stock originates in Minnesota, North Dakota or Montana.

Q. Excepting for the added distance?

A. Excepting for the difference in the distance.

Q. What are the principal points of origin of shipments of merchandise on the eastern end of your System and destined for delivery in Minnesota, North Dakota and Montana?

A. The principal points of origin are Duluth, Superior, St. Paul, Minneapolis and the Minnesota Transfer.

Q. I am speaking now of the merchandise covered by the order of the Commission under date of September 6, 1906, rates

prescribed by which are complained of in the bill of complaint. That is your understanding, is it?

A. Yes, sir.

Q. To what points of destination does this merchandise move?

A. To all points in Minnesota and North Dakota.

Q. And Montana?

A. And Montana, and beyond; west of our eastern terminals.

Q. What different conditions exist with regard to transportation, as between shipments, according to whether the points of destination are in Minnesota, North Dakota or Montana?

A. There are no different conditions with respect to the shipments destined to points in the several states named.

Q. Prior to the Commission's order of September 6, 1906, what had been the custom of the Northern Pacific Company with regard to making its tariffs on merchandise in the states of Minnesota, North Dakota and Wisconsin?

A. There had been two general bases of rates; one a terminal tariff and the other a distance tariff. The terminal rates applied to points in Minnesota and North Dakota on substantially the same basis; that is, there was no difference in the conditions that made a different basis west of Minnesota than was applied to Minnesota stations. The distance tariff in effect applied between all points in Wisconsin, Minnesota and North Dakota; that is, it applied locally between points in any one of these states or on interstate traffic between points in one state and points in another.

Q. The same charge being made for the same distance within any territory which these three states comprise?

A. Yes, sir.

Q. Will you explain what you mean by a terminal tariff?

A. The terminal tariffs are those that apply from terminal points.

Q. Are they lesser or larger than distance tariffs?

A. As a rule, they are less than the distance tariff rates.

Q. And upon what principle are they made less than distance tariff rates?

A. On the basis of the volume of traffic; the traffic being heavier from the terminal points, in larger volume, it can be handled at lower rates.

The MASTER: Could the witness, right here, give us an example of each?

Mr. HOW: I am going to.

Q. For example, what is the principal terminal transportation in the state of Minnesota?

A. St. Paul and Minneapolis.

Q. And terminal tariffs exist as between St. Paul and Minneapolis in either direction?

A. Yes, sir.

Q. Now, for the purpose of comparison, will you give us an example of a distance tariff or, at least, give us an example of two points as between which a distance tariff applies?

A. Between Little Falls and Staples, Minnesota.

Q. What terminals had you, prior to the order of the Commission, in Minnesota, to which you applied a terminal tariff?

A. The eastern terminals; that is, Duluth, Superior, St. Paul, Minneapolis and Minnesota Transfer.

Q. Superior is not in Minnesota.

A. No.

Q. I am asking merely for Minnesota.

A. Well, Duluth, St. Paul, Minnesota Transfer and Minneapolis. In addition to that, there were rates on the terminal basis applied from certain jobbing centers in Minnesota to local stations in Minnesota, those rates being made in accordance with the order of the Minnesota Railway Commission.

Q. Those, however, were made under order of the Commission, and Duluth, St. Paul, Minneapolis and the Transfer were made voluntarily by the Company?

A. At the terminal points, yes, sir.

Q. With regard to terminal tariffs, installed by the Company itself, without the order of the Commission: Is it necessary, in order that a tariff shall be a terminal tariff, that it shall move between two terminal points established by the Company, or is it a terminal tariff if it moves either to or from one of the terminal points established by the Company?

A. It is considered a terminal tariff if it covers traffic moving to or from the principal terminals of the road.

Q. It is not necessary, therefore, that both the point of origin and the point of destination shall be one of the terminal points?

A. No, sir.

Q. I show you Complainant's Ex. 35—Baird, and I ask what that purports to show.

A. This statement shows the rates from and to Moorhead, or between Moorhead and stations west in North Dakota; those rates are based on the distance tariff in effect applying between points in Minnesota and North Dakota and which was in effect, also, locally in Minnesota before the rates were reduced by order of the Commission.

Q. That is the first story?

A. Yes, sir.

Q. Now, the second story.

A. The second statement shows the rates from points within 100 miles of Moorhead to Moorhead. Those rates are the distance tariff rates covered by the order of the Railway Commission.

Q. Prescribed by that order?

A. Yes, sir.

Q. The third story.

A. The third shows the rates for distances within 100 miles from Moorhead to stations in Minnesota, and is based on the supplemental order of the Commission extending the benefits of the terminal rates to certain distributing points in Minnesota.

Q. That order of the Commission established certain distributing stations, terminal stations, for the purposes of distribution within the state of Minnesota, as I understand it?

A. It named certain stations, at which there were distributing or jobbing houses handling merchandise to points in Minnesota, and established from those points the same basis of rates as applied from the terminals, from the eastern terminals of the road to stations in Minnesota.

Q. And that, I take it, accounts for the fact that the rates from Moorhead to stations east in Minnesota are uniformly less than the rates to Moorhead from stations east in Minnesota, as shown in Ex. 35—Baird?

A. Yes, sir.

Q. There is a second page of Complainant's Ex. 35—Baird; what does that purport to show?

A. That shows the rates between points 100 miles apart, one located east of Moorhead in Minnesota, and the other west of Moorhead in North Dakota, the distances east and west of Moorhead being shown on the left-hand margin.

Q. Now, the top row of figures and letters refers to what?

A. Refers to the interstate distance tariff in effect between points.

Q. No, the top row of figures and letters. It refers to the classes?

A. Oh, it refers to the classes, as described by the Western Classification, from First class to class E.

Q. And described, also, or used and applied, also, under the order of the Commission under date of September 6, 1906?

A. Yes, sir.

Q. What does the second row of figures signify?

A. The second row represents the interstate distance tariff rates that apply between points in Minnesota and points in North Dakota.

Q. At what time?

A. At the time the rates were reduced by the order of the Commission, and, also, at the present time.

Q. Have those rates not been changed at the present time?

A. Not on interstate traffic.

Q. Between those points?

A. No, sir.

Q. I take it that those figures apply uniformly to all the distances below?

A. The first row of figures applies for a distance of 100 miles, and the following rates are what would be applied: first, west-bound from a point 90 miles east of Moorhead to a point 10 miles west of Moorhead, as compared with the east-bound rates between the same points.

Q. And how are those rates made up?

A. They are made up by adding the local rates for the distance shown in Minnesota and North Dakota.

Q. And when you speak of local rates, do you mean the local rates now in effect?

A. The local rates now in effect, yes, sir.

Q. Prescribed by the Commission in Minnesota and in effect in North Dakota?

A. In effect in North Dakota.

Q. But I take it from your previous testimony, that the first row of figures showing rates, that is, in the line beginning "100 interstate," means that those rates for the respective classes in that line apply uniformly, whatever the proportion of the 100 miles is in Minnesota and whatever the proportion is in North Dakota?

A. Yes, sir, for through shipments. I might add, that the

figures following the second row, show the rates for the varying distances in Minnesota and North Dakota but aggregating 100 miles.

Q. What conditions have you any knowledge of that justify different tariffs, whether a shipment originates ten miles east of the North Dakota-Minensota line and proceeds to a point 90 miles west of that line, or whether it originates 90 miles east of that line and proceeds to a point ten miles west?

A. There are no conditions which would justify any difference in the rate. As a matter of fact, on a through shipment, the rate prescribed for 100 miles, designated in the statement as interstate, would apply on that shipment. This combination of locals would only be used where shipments are made from Minnesota to Moorhead and out of Moorhead for the distances mentioned to a point in North Dakota, or from a point in North Dakota of the distances shown from North Dakota to Moorhead, with the local rates from Moorhead to the point aggregating 100 miles in distance in Minnesota.

Q. But I observe by examination of sheet 2 of Ex. 35—Baird, that for a distance of 100 miles beginning 90 miles east of the Minnesota-North Dakota line and ending 10 miles west, the sum of the locals, both west-bound and east-bound, in practically all the classes, is substantially less than the interstate tariff installed and maintained by the Company.

A. Yes, sir.

Q. And that is so in some cases with regard to the tariffs for the distance beginning 80 miles east of the state line and ending 20 miles west?

A. Yes, sir.

Q. And then as the proportion of the 100 miles in Minnesota decreases and the proportion in North Dakota increases, the sum of the locals gradually grows larger until finally in all classes the sum of the locals is larger than the Interstate rates?

A. Yes, sir.

Q. Prior to the promulgation of the Commission's order and the adoption of rates under it by the Company, how have the freight tariffs on the Northern Pacific System compared as between different parts of the System in general, taking the System as a whole?

A. The general basis of rates on the western section of the Northern Pacific, that is, that portion situated west of the main range of the Rocky mountains, has been on a higher basis than the tariffs in the eastern section.

Q. How long has that condition existed?

A. It has always existed.

Q. Have you prepared statements showing how rates now compare on the eastern and western portions of the System east of the Rockies and west of the Rockies?

A. Yes, sir.

Witness produces paper marked for identification "Complainant's Ex. 36—Baird."

Q. Showing you Complainant's Ex. 36—Baird, will you explain the exhibit so marked?

A. This exhibit shows the rates in effect at the present time for various distances from 25 to 400 miles; first, the Minnesota distance tariff rates; second, the terminal rates from Minneapolis to points of the distances shown; third, the Montana distance tariff rates; fourth, the terminal rates from Helena; fifth, the Washington distance tariff. It will be noted under that heading that there are two scales of rates. The first scale of rates shows the Washington distance tariff in effect on that portion of the Northern Pacific Railway between Sumas (which is the point at the international boundary) and Portland, Oregon; these rates are lower than the general distance tariff in Washington, for the reason that the line described, from Sumas to Portland, traverses a section of the country that is very close to the Pacific ocean, (and it applies between points that are on Puget Sound or the Columbia river,) and on that ac-

count the rates in that section of Washington are lower than the general distance tariff applicable in the state. And the last scale of rates are the terminal rates from Tacoma coming east into eastern Washington and Idaho.

Q. The rates in the first line of each distance are the rates established by the Commission by its order of September 6, 1906, and at present in force?

A. Yes, sir.

Q. And how about the rates in the second line "Terminal from Minneapolis?"

A. Those are the rates established by the Commission, in their order, from terminal points.

Q. And also now in force, pursuant to the order of the Commission?

A. Yes, sir.

Q. And that is the case in each of these groups, each distance?

A. For each distance as shown in this statement.

Q. The other rates, "Montana distance terminal from Helena," "Washington distance," (both series,) and "Terminal from Tacoma," I understand it, are the present rates in effect upon the Northern Pacific System in those respective localities?

A. Yes, sir.

Mr. O'BRIEN: You haven't got the old tariffs of your road from St. Paul to Minneapolis?

WITNESS: Well, I have a copy here, but they are not shown in this statement.

Mr. HOW: What are you inquiring about?

Mr. O'BRIEN: I thought the statement would be much more complete if we had the old tariff.

Mr. HOW: Prior to the order of the Commission?

Mr. O'BRIEN: Yes.

Mr. HOW: I think we ought to have that, but I haven't got it.

Q. Showing you Complainant's Ex. 37—Baird, what does that purport to show?

A. That is a statement showing the rates on coal for various distances up to 400 miles. The first column shows varying distances from 50 to 400 miles. The next two columns, under the head of "Legislative Rates" show the rates prescribed by the act of April 18, 1907; the rates under the head of "From Duluth" show the existing rates to points west of Duluth within the distances stated; and the column under the caption of "From Red Lodge" shows the existing rates from Red Lodge to points for the same distance; and under the caption of "From Roslyn" the rates from Roslyn, Washington, for the same distance.

Mr. O'BRIEN: The western coal is all soft coal?

WITNESS: All soft coal. And the last row of figures, under "Minnesota Legislative Rates" would reduce—

Q. The lower row of figures?

A. Yes, sir—show the average reduction which would result in the rates from Duluth on hard and soft coal if the legislative rates were made effective, and would show the reduction, also, from Red Lodge and from Roslyn if the same basis was applied on shipments from those points.

Q. Do you know in general how the density of traffic in soft coal from Red Lodge and Roslyn compares with that from Duluth?

A. Well, I have not the figures separated for the hard and soft coal from Duluth, but the total tonnage from Duluth during the past year has been, approximately, one million tons; from mines in Montana, approximately 580,000 tons; and from mines in Washington, approximately 780,000 tons.

Q. Showing you Complainant's Ex. 38—Baird, will you you explain that exhibit?

A. This exhibit shows the rates on lumber for various distances up to 400 miles, from Minneapolis to points in Minne-

sota and North Dakota; also, locally in Montana, and from Tacoma to points in Washington and Idaho, for the same distance, as compared with the legislative rates prescribed by the act.

Q. And it also contains the distance tariffs in Washington as well as the terminal from Tacoma?

A. Yes, sir; it contains also the distance rates.

Q. The first column, I take it, is the rates prescribed by the legislature in its act of April 18, 1907?

A. Yes, sir.

Q. For the several distances there shown?

A. And the second column, the rates in the present Minnesota distance tariff; and the next column the terminal rates from Minneapolis now in force.

Q. And the other three columns represent rates now in force—

A. In Montana, locally in Washington and from Tacoma.

Q. Have you in mind, in general, what the comparative density of traffic is on lumber in Minnesota, Montana and Washington?

A. The traffic is many times heavier in Washington than it is in Minnesota; that is, the traffic originating in the states of Washington and Idaho, is very much heavier than the lumber traffic originating in Minnesota.

Q. Which rates, if any, apply to the state of Idaho, the Washington rates or the Montana?

A. The Washington rates.

Q. I show you Complainant's Ex. 39—Baird. Will you explain that exhibit?

A. This exhibit shows the rates on livestock from local points in Minnesota and North Dakota to Minneapolis; between points in Montana; and from points in Washington and Idaho to Tacoma, for distances within 400 miles; as compared with the legislative rates for the same distance.

Q. There is a heading, I see, "Terminal from Minneapolis." That should be "Terminal to Minneapolis," apparently?

A. The rates are the same in either direction.

The MASTER: It should be "to or from?"

WITNESS: Yes.

Q. The exhibit is gotten up in the same general way as Complainant's Ex. 38?

A. Yes, sir. It shows the actual rates in effect to-day in each of the districts named.

Q. On this Ex. No. 39, and as well on the three previous exhibits, there appears this legend, "Tariff authority, North Dakota to Minneapolis 273-A; Washington and Idaho to Tacoma 21965; Minnesota to Minneapolis 272-A; Montana Distance 14156." What does that matter refer to?

A. Those indicate the Northern Pacific tariffs in the territory described in which these rates can be found.

The MASTER: Tariff sheets?

Mr. HOW: Tariff sheets, yes.

Q. To what extent have you a general knowledge of the conditions of transportation upon roads running substantially parallel with the Northern Pacific and between the Rocky mountain range and the Pacific coast?

A. I have a general knowledge of the general basis of rates in effect throughout that territory.

Q. I am speaking about conditions of transportation as well as the actual rates.

A. The conditions of transportation as between the various lines in that territory are substantially the same.

Q. And you have a general knowledge of the tariffs on those lines, you have testified before, I think.

A. Yes, sir.

Q. How do such tariffs compare with the tariffs west of the Rockies now maintained by the Northern Pacific Company on its various classes and kinds of freight?

A. The tariffs of the Northern Pacific Railway will compare favorably with the tariffs of other roads in the same section of the country.

Q. That is, favorably with the point of fairness, or favorably with the point of amount?

A. Favorably with respect to the actual rate itself for points of equal distance.

The MASTER: Lower or higher?

Q. When you say compare favorably, does that mean—

A. I mean that they are generally as low as the rates on other roads in the same section.

Q. Will you name some such lines as you have in mind for the purpose of making this comparison?

A. The Oregon Railway & Navigation Company, the Great Northern Railway Company, the Southern Pacific Company.

Q. Have you made any special investigation of conditions of transportation upon lines in states southerly of Minnesota and running in substantially a parallel direction with the Northern Pacific road?

A. Yes, sir, I have.

Q. What particular conditions affecting transportation have you made special investigation of?

A. The conditions with respect to population per square mile, and the products of those states per square mile, and also per mile of railway, showing a comparison of those rates with the rates in effect over the Northern Pacific.

Q. What states did you make that investigation with regard to?

A. The states of Illinois, Iowa, Wisconsin, Minnesota and North Dakota. I find, in this investigation, that the production of grain in those states is as follows, (these figures being taken from the Hand-book of the Department of Agriculture for 1907,) and this shows that the total production of grain in Illinois for that year was 456 million bushels; Iowa, 402 mil-

lion bushels; Wisconsin, 125 million bushels; Minnesota, 206 million bushels; North Dakota, 120 million bushels. The average production per square mile in each of these states was as follows: Illinois, 8,587 bushels; Iowa, 7,177 bushels; Wisconsin, 2,232 bushels; Minnesota, 2,477 bushels; North Dakota, 1,700 bushels. The railway mileage in the same states is as follows, taken from Poore's Manual of 1907: Illinois, 12,085 miles; Iowa, 9,844 miles; Wisconsin, 7,400 miles; Minnesota, 8,103 miles; North Dakota, 3,875 miles. The average production of grain per each mile of railway in each of the five states named, for the year 1907, was as follows: Illinois, 40,235 bushels; Iowa, 40,851 bushels; Wisconsin, 16,898 bushels; Minnesota, 25,480 bushels; North Dakota, 31,011 bushels; and the average for Minnesota and North Dakota, taken together, was 27,270 bushels. If the railway tonnage of farm products bore the same relation to the total railway tonnage of all commodities in each state, and assuming that the cost of constructing, maintaining and operating the railways was approximately the same, mile for mile, in each state, the grain rates in the other states would bear the following relation to the Iowa rates, viz.: Illinois, 102 per cent; Wisconsin, 242 per cent; Minnesota, 160 per cent; North Dakota, 131 per cent; Minnesota and North Dakota combined and considered as a whole, 149 per cent.

Mr. O'BRIEN: Let me ask a question there. You mean the tariffs as now maintained would bear those proportions?

Mr. HOW: No.

WITNESS: No.

Q. You may explain what you do mean. You don't mean that.

A. If the rates in Iowa are based on an average production of 40,851 bushels per square mile, then the rates on Minnesota to produce the same revenue per mile of railway should be 160 per cent of the Iowa rates.

Q. Have you investigated with regard to the comparative

rates at equal distances between points of shipment to Chicago and points of shipment to Minneapolis, respectively, on grain?

A. Yes, sir, I have taken the rates from Iowa to Chicago at points from 148 to 400 miles on the Chicago & Northwestern Railway, that line being a reasonably direct line from the Iowa fields to Chicago, and compared the rates in effect at the present time from those points to Chicago with the Minnesota legislative rates for the same distance.

Q. What is the result of that comparison?

A. That shows that from Low Moor, Iowa, to Chicago, 148 miles, the rates are, on wheat ten cents and coarse grain ten cents; the Minnesota legislative rates for 150 miles, on wheat 8.7 cents and on coarse grain 7.6 cents. From Lisbon, Iowa, to Chicago, 202 miles, the rate on wheat is 13 cents and on coarse grain 11 cents; the Minnesota legislative rates for 200 miles are 9.6 cents on wheat and 8.4 cents on coarse grain. From State Center, Iowa, 303 miles, the rate to Chicago on wheat is 13.1 cents, on coarse grain 11.7 cents; the Minnesota legislative rates for 300 miles, are on wheat 10.9 cents, on coarse grain 9,6 cents. From Carroll, Iowa, 396 miles, the rate to Chicago on wheat is 14.7 cents, on coarse grain 13.3 cents; the Minnesota legislative rates are for 400 miles, on wheat 12 cents, coarse grain 10.6 cents.

Q. Have you also compared the rates in effect from those respective points to Chicago with your present rates from points equidistant from Minneapolis?

A. Yes, sir.

Q. What is the result of that comparison?

A. Well, I have made the comparison from Duluth instead of Minneapolis.

Q. To Duluth instead of Minneapolis?

A. Yes, sir.

Q. That will do as well, I suppose?

A. Yes, sir.

Q. In this description the rates from the respective points to Chicago will be the same as in your last, and you need not repeat them; but state, if you please, the present rates in force by the Company, without regard to the legislative rates prescribed, from these points equally distant to Duluth.

A. From Wadena, Minnesota, 148.8 miles, wheat 9.5 cents, coarse grain 9.5 cents. From Detroit, Minnesota, 201 miles, wheat ten cents, coarse grain ten cents. From Gorman, North Dakota, which is on the main line, west of Fargo, wheat 13 cents, coarse grain 13 cents. From Merrills, Minnesota, on the Winnipeg branch, 303 miles, 11 cents on wheat and 11 cents on coarse grain.

Q. The lower rate from Merrills and from Gorman, practically the same distance, is caused by what?

A. Is caused by the fact that the rate from Merrills, which is between Grand Forks and Crookston, is based on the shorter mileage of the Great Northern from the same territory to Duluth.

The MASTER: To meet competition?

WITNESS: To meet competition. Steele, North Dakota, to Duluth, 398.5 miles, the rate on wheat is 15 cents, on coarse grain 15 cents. From Joliette, North Dakota, 400.2 miles, on wheat 12 cents and on coarse grain 12 cents. The lower rates from Joliette as compared with Steele are on account of the fact that the rates in that territory to Duluth are based on the short mileage of other lines and they are applied from Northern Pacific stations on account of competitive conditions.

Q. Have you a general knowledge, without going into detail, so that you can make comparison upon present merchandise rates of the Northern Pacific for distances west from the Head of the Lakes and the Twin Cities with similar tariffs for distances west of Chicago?

A. The merchandise rates of the Northern Pacific are, in many cases, lower than the rates for similar distances in Illi-

nois and Iowa. In some cases, especially in Iowa, the long-distance merchandise rates are controlled by conditions which are outside of the state.

Q. And are higher or lower than those established by the Northern Pacific for the same distances?

A. In some cases they are higher, and in some cases lower; but where the lower rates are made for long distances it is usually on account of some competitive condition. I might cite, as an instance, that the rates between any point on the Mississippi river, in the state of Iowa, and a point on the Missouri river, distances of over 300 miles, cannot be any greater than the rate between the points on the Mississippi river and the Missouri river at the shortest distances. Those points, I believe, are Hannibal, Missouri, and St. Joseph, Missouri. The distance between those points is substantially 200 miles, and the rates fixed between those points fix the maximum rates that can be applied across the state of Iowa, for the reason that there is a very large amount of western traffic from points east of the Mississippi river to points west of the Missouri river that is based on the through rates made by adding the eastern rates to the Mississippi river rates from the Mississippi river to points beyond.

Q. To the locals beyond?

A. To the locals beyond.

Q. What has been, heretofore, and before the establishing of the rates prescribed by the Commission's order of September 6th, 1906, the relation of rates as between different parts of the eastern portion of the Northern Pacific System, as to whether it has been fair and equable or whether it has been disjointed?

A. The rates have been fairly adjusted as between the different portions of the road on the eastern section of the line, that is, east of the Rocky mountains.

Q. And what has been the condition with regard to the western district west of the Rocky mountains as between dif-

ferent portions of the System there located?

A. The rates in that section have also been adjusted fairly as between the different states and communities in that section.

Q. How long has this comparative relation of rates between the eastern and western portions of the System existed?

A. Well, it has always existed.

Q. What, in your judgment, based upon your experience of twenty-five years in rate-making, would be the effect, if any, on rates on other parts of the Northern Pacific System if rates in Minnesota be substantially lowered?

A. If the rates in Minnesota are substantially lowered, it will necessarily force a corresponding reduction to points in North Dakota and the territory west thereof.

Q. And why is that your opinion?

A. This is so for the reason that it would be impossible to maintain, for any length of time, a higher rate schedule at Wahpeton, Grand Forks, and Pembina, North Dakota, than at Breckenridge, Moorhead, East Grand Forks and St. Vincent, Minnesota; North of Wahpeton there are lines of railway paralleling the Red river, but on opposite sides, one line in Minnesota and the other in North Dakota; it would be impossible to make materially higher rates from points from and to the towns on the North Dakota lines than are made from and to opposite towns on the Minnesota lines, and, where these lines converge, the rates must be the same.

Q. What would be the result of not making them the same? That is, if the line in Minnesota should have a lower rate than the line across the river in North Dakota, what would be the result?

A. Why, the result would be that the business which is naturally tributary to the North Dakota towns would be absorbed by the towns on the east side of the river.

Q. And you would lose the interstate business?

A. Lose the interstate business.

Q. And it would all go to a local line?

A. Yes, sir.

Q. Go on.

A. And this is especially true with respect to the grain rates. Farmers, as a rule, buy their supplies at the point where they market their grain. Any unfair adjustment in the rates on the latter which affect the ability of one point to ship grain on a substantial equality with other points in the same vicinity, affects the merchandise business of those towns to the same extent, and such an adjustment of the rates would constitute unjust discrimination against the towns paying the higher rates and would disturb conditions which have long existed and on which the trade of those towns has been built up with the surrounding country. There are no conditions except the competition of other lines which justifies lower rates for the lines running north through Twin Valley and Crookston to East Grand Forks than are made on the main line to a point of equal distance west of Moorhead.

Q. What conditions, if any, now exist which in your judgment tend to justify a disturbance of the relation that has existed heretofore, in each of these respective districts, taken by themselves and as between them, by lowering rates in the state of Minnesota?

A. None whatever.

Q. How are Moorhead, Minnesota, and Fargo, North Dakota, situated with respect to each other?

A. They are situated at opposite sides of the Red river and are substantially one town, they are divided by this stream which is only a few hundred feet wide.

Q. And how are Breckenridge and Wahpeton situated with respect to each other?

A. Situated in exactly the same way.

Q. And East Grand Forks and Grand Forks?

A. Just the same.

Q. The Northern Pacific has a line to each of those couples of towns?

A. Yes, sir.

Q. And deals with them all?

A. Yes, and does business at each station and has always treated them substantially as one town.

Q. That is, each couple is treated as one town?

A. Yes, sir.

Q. What are their principal shipments?

A. Grain, livestock and other farm products and the products of grain.

Q. To what markets in general do they ship?

A. To Duluth, Minneapolis, St. Paul and Superior.

Q. And does that apply to each of these six towns named?

A. Yes, sir.

Q. What shipments do they receive on the Northern Pacific System?

A. Coal, lumber and general merchandise.

Q. And where do those shipments originate?

A. They originate at our eastern terminals, Duluth, Superior, St. Paul, Minneapolis and points east thereof.

Q. What other practicable consuming markets have they than these that you have named for their grain and farm products, etc.?

A. Under present conditions they have none.

Q. Are there any consuming markets of any kind to the north for them?

A. None, except to a very limited extent.

Q. And how about the west?

A. They have a limited market for shipments of flour to western points.

Q. But not for grain?

A. Not for grain.

Q. Or livestock?

A. Or livestock.

Q. Or other farm products?

A. No, sir.

Q. And how about the south?

A. There are no markets to the south except that you might call St. Paul and Minneapolis south.

Q. I mean south of the Northern Pacific System.

A. None at all.

Q. What other available producing markets have they than those which you have named, the Twin Cities and the Head of the Lakes?

A. None, except as they, to a limited extent, get supplies from the Pacific coast (that is, the north Pacific coast,) and California.

Q. How large, proportionally?

A. That is a very small proportion of the total.

Q. What has been, heretofore, and is now, the difference in rates accorded these respective pairs of towns?

A. They have always been the same. That is, Moorhead has always been the same as Fargo, Breckenridge the same as Wahpeton, and East Grand Forks the same as Grand Forks.

Q. Does that apply to the rates both out and in?

A. Yes, sir.

Q. For what reason has that equality been maintained?

A. For the reason that they are so close together that they could not be considered otherwise than as one town; the stations in no case are over a mile apart.

Q. Now, is that matter, of treating two stations so close together as a common point or as one point, a peculiar custom of the Northern Pacific Road, or is it a general custom with all railways all over the country?

A. I believe the practice is universal.

Q. Do you know whether or not it has been recommended, or forced, if need be, by the Interstate Commerce Commission

in its practice, or at least recognized?

A. It has been always recognized as far as I can recall.

Q. Perhaps there has been no occasion to force that?

A. I don't recall of any orders covering that point.

Q. Have you prepared a statement showing the rates in effect from the Head of the Lakes and the Twin Cities, respectively, and Breckenridge and Wahpeton, East Grand Forks and Grand Forks and Moorhead and Fargo, respectively, on commodities covered by the Act of April 18, 1907, as compared with the rates prescribed by the act?

A. Yes, sir.

Q. Will you produce that statement?

Witness produces statement, marked for identification, Complainant's Ex. 40—Baird.

Recess till 2 P. M.

AFTERNOON SESSION.

Q. It is marked Complainant's Ex. 40—Baird. Will you describe that exhibit?

A. This exhibit is intended to show the rates on the various commodities covered by the act from or to points on the east side of the Red river in Minnesota, and from or to the eastern terminals, as compared with the rates from and to points in North Dakota, on the opposite side of the river.

Q. The western termini of the haul in Minnesota being, respectively, East Grand Forks and Breckenridge, and the corresponding western termini of the haul in North Dakota, Grand Forks and Wahpeton, and the eastern termini either St. Paul or Duluth, according to the general market of the product described?

A. Yes, sir.

Q It shows the present tariff rate on livestock (hogs, etc.,) from Grand Forks, North Dakota, to St. Paul, as 26 per hundred pounds; it shows the rate prescribed by the Act of April

18, 1907, from East Grand Forks to St. Paul, as 21.4 cents per hundred pounds. What, in your opinion, would be the practical result, based upon your experience, as a transportation matter, of an attempt to maintain the present schedule from and to Grand Forks, North Dakota, and at the same time to maintain the proposed schedule from and to East Grand Forks?

A. It would result in the shipments of stock from Grand Forks being made from East Grand Forks, as the two schedules could not be maintained and any business secured under the higher schedule.

Q. What would then become of your interstate business in matters covered by this schedule between Grand Forks and St. Paul, or Duluth, as the case may be?

A. We would have no interstate business between those points.

Q. And all the commodities covered by the act that went between those two points would be hauled at local rates to East Grand Forks, or from East Grand Forks, as the case might be?

A. Yes, sir.

Q. Have you prepared a statement showing the rates in effect prior to the taking effect of the Commission's orders of September 6th, 1906, and June 1, 1907, the supplementary order on the merchandise and commodities covered by those orders, as compared with the rates prescribed by those orders between the Head of the Lakes and the Twin Cities, respectively, and Breckenridge, Wahpeton, Moorhead, Fargo, East Grand Forks and Grand Forks, respectively?

A. Yes, sir.

Q. Will you produce that statement, if you please?

Witness produces statement and same is marked Complainant's Ex. 41—Baird.

Q. There is a series of double rows of figures divided by a line; the top of the double row in each member of the series shows the different classes of merchandise covered by the order

of September 6, 1906; the lower row shows the respective rates for the respective classes; am I right about that?

A. Yes, sir.

Q. The first double row of figures shows the tariff in effect from St. Paul, Minneapolis, Duluth and Superior, to Breckenridge, prior to the promulgation and adoption of the schedule prescribed in the Commission's order of September 6, 1906?

A. That is correct.

Q. The next shows the rates prescribed by the Commission's order from St. Paul and Minneapolis, or probably from Minneapolis, the shorter point—

A. Yes, sir.

Q. —to Breckenridge, and now in force; and the third double row shows the rates prescribed by the order from Superior to Breckenridge—

A. From Duluth.

Q. From Duluth to Breckenridge,—and now in force?

A. Yes.

Q. Will you state why the rates from St. Paul to Breckenridge have been established as and are the same as the rates from Minneapolis to Breckenridge?

A. Because St. Paul and Minneapolis have always been considered as common points and treated as though they were one city, as they join, and there are industries located between the cities which are in the intermediate territory where it would be impossible to make any distinction between the rates from an industry located in Minneapolis and an industry located in St. Paul.

Q. You have adopted the Minneapolis mileage rather than the St. Paul mileage?

A. Yes, sir.

Q. And for that reason, I take it?

A. Yes, sir.

Q. Because you must treat St. Paul as the same place as

Minneapolis?

A. Yes, sir.

Q. And is that the fact also with regard to Duluth and Superior?

A. The rates from Duluth are based on the distance to Breckenridge via the Northern Pacific Railway, based on the Commission's order, and we make Superior the same as Duluth for the same reason that we make St. Paul the same as Minneapolis.

Q. The same principle applies and the same fact exists with regard to Wahpeton, East Grand Forks and Grand Forks?

A. Yes, sir.

Q. The exhibit shows that prior to the taking effect of the rates prescribed in the order of September 6, 1906, the rates from the respective eastern points to Breckenridge and to Wahpeton were the same?

A. Yes, sir.

Q. It shows also that the rates now in effect, being those prescribed by the Commission, from Duluth to Breckenridge, are in effect also from Duluth to Wahpeton and from Superior to Wahpeton?

A. Yes, sir.

Q. And that is the same with regard to Grand Forks and East Grand Forks?

A. Yes, sir.

Q. Is it the same also with regard to Fargo and Moorhead?

A. It is.

Q. When was the rate between Duluth and Superior and St. Paul and Minneapolis, on the one hand, and Wahpeton on the other, reduced to the rates shown in your Exhibit 41 as now existing?

A. At the same time the rates were reduced from those points to Breckenridge; the reduction was made simultaneously.

Q. Under the provisions of the Interstate Commerce act, by filing your schedule?

A. Yes, sir.

Q. Is that same statement true in regard to Grand Forks?

A. The same statement is true with regard to Fargo, Moorhead, East Grand Forks and Grand Forks.

Q. Perhaps you have stated it sufficiently, but will you state again, why a reduction was made from Superior to Wahpeton, Grand Forks, and Fargo, respectively?

A. Because the business at those points—that is, Wahpeton, Fargo and Grand Forks—has been built up on the basis of a parity of rates, and in fact, the rates have always been on that basis, and the substituting of any other basis at this time which would make the rates to Wahpeton, Fargo and Grand Forks higher than the rates to opposite points in Minnesota, would be an unjust discrimination against the Dakota towns.

Q. St. Paul and Minneapolis are treated as common points; Duluth and Superior are treated as common points; and these respective pairs of cities on opposite sides of the Red river are treated as common points. Do you know of any principle under which the interposition of a state line between St. Paul and Minneapolis would change conditions of transportation so as to justify treating St. Paul and Minneapolis as in different localities?

A. I do not, and I believe that there are no conditions which would justify any difference in the rates as between the two localities.

Q. What would you say in defense of the charge against you of discrimination if you had maintained your former interstate rates from Superior to Fargo and had installed and maintained at the same time the rate prescribed by the Commission from Duluth to Moorhead?

A. I believe that we would have to admit that such a charge was rightly made.

Q. Should you know of any defense to the charge, in fact?

A. None whatever.

Q. What other reductions, if any, have been made in rates from the Head of the Lakes and the Twin Cities to points in North Dakota? at least, what reductions have been made to other points than the border cities in North Dakota?

A. The merchandise rates were reduced to points as far west as Bismarck, North Dakota, at the time they were reduced to Moorhead.

Q. Why were those rates reduced?

A. Because we believed it necessary in order to continue the rates on a fair and equitable basis or more equitable than they would have been had we made no reduction beyond Fargo.

Q. The reduction in Minnesota, however, disturbed the relation of rates and the equable proportion of rates from the eastern part of your System very materially, did it not?

A. It did, especially to points in North Dakota.

Q. Why have you not had to make further reductions, then, than you have made?

A. Well, I believe that we will eventually be obliged to make further reductions. We are, in fact, confronted with that situation at the present time. The communities which we serve in North Dakota are not satisfied with the present adjustment of rates from the east to stations in North Dakota as compared with the rates, for instance, from Fargo and Bismarck to points in the same territory.

Q. Will you describe what is meant, in your profession, of making tariffs by "commodities?"

A. The general term "commodities" or "commodity tariff" is intended to cover a tariff on any article that is made an exception to the classification. The Classification classifies all of the commodities in one of several classes. Sometimes it is necessary to make a rate on a commodity which is lower than the Classification. Then it is taken out of the Classification

and is covered by what is known as a commodity tariff.

Mr. O'BRIEN: That is always confined to carload lots, is it not?

WITNESS: Almost entirely. There are some less than carload commodity rates.

Q. But, as a rule, they are articles of merchandise taken out from the Western Classification, which is used by the railroad companies and the Commission, and put into special classes by themselves?

A. Yes, sir.

Q. Or with others?

A. Yes, sir.

Q. And then they are called "commodities" to distinguish them from a—

A. From the classification and class-rates.

The MASTER: I understand, then, that the Classification by its terms really covers the commodities?

Mr. HOW: Covers everything.

The MASTER: Covers everything that is transported?

Mr. HOW: That is right.

The MASTER: All kinds of freight?

WITNESS: Well, there are a few exceptions to that, because sometimes the Classification does not make a rate on a commodity; for instance, I think it makes no rate on coal, but it says, "See special tariffs." In those cases, for articles like coal and grain, that are handled generally in large quantities, the Classification does not specifically provide a rate.

The MASTER: No, but it classifies, does it not?

WITNESS: It does in less than carloads, but in some instances it makes no classification for the carloads.

The MASTER: Well, does it mention them in the Classification at all?

WITNESS: Well, it mentions them, and usually refers to a special tariff.

The MASTER: So that, really, so far as the enumeration of articles is concerned, the Western Classification covers everything?

WITNESS: The Western Classification is complete.

The MASTER: But the commodities which you mention are those where different rates, are taken out of the Western Classification, either by the application of different rates or by the application of a special rate?

WITNESS: Yes, sir, that is it.

Mr. O'BRIEN: Your Honor will remember, I think it was when Mr. Tittemore was upon the stand and the Western Classification was presented, he could not find wheat, except "grain in sacks." Now, wheat in carload lots was not included in the Classification.

The MASTER: No, wheat was included, but it wasn't included in that way.

Mr. O'BRIEN: Well, wheat in sacks, seed wheat.

The MASTER: Yes, sacks; I believe that was referred to.

Mr. O'BRIEN: And matters of that sort. So that my understanding at that time was that the Classification did not mention any of the well-recognized commodities, although they might be included.

Mr. HOW: I desire this explanation, for the assistance of the Master, because in the supplemental order of the Commission in June, 1907, the articles covered by it are called "commodities," and we have generally spoken of the "commodity act" as though those were the only commodities.

Q. On the second page of your Exhibit 41, under the heading "Grocers Commodities rates in cents per one hundred pounds," what is intended to be signified?

A. The first row of figures show the rates to Breckenridge, Wahpeton, Grand Forks, East Grand Forks, Fargo and Moorhead, respectively, on the commodities enumerated, prior to June 1, 1907; and the next two rows of figures show the rates

from St. Paul and Minneapolis and from Duluth and Superior to the same points, in effect after June 1, 1907.

Q. At what time were the rates from Superior to Grand Forks, Fargo and Wahpeton, respectively, changed?

A. On the same date that the rates were changed from Duluth to the same points.

Q. And that was on the same day that they were changed to the opposite Minnesota points?

A. Yes, sir.

Q. You have said it is your opinion that it will be necessary to make further reductions to points westwardly of the Minnesota-North Dakota line if the present merchandise tariff of Minnesota shall remain ultimately in force. How far westwardly, in your judgment, will it be necessary to make that reduction?

A. If the merchandise rates are continued and the commodity rates are put into effect, the result, in my opinion, will be a lowering of the rates generally over the entire System.

Q. And why?

A. I do not believe it is possible to continue, for any length of time, a basis of rates which is unfair or discriminatory in its character. These rates, considering the conditions, are unfair to the Railway Company, as, should all of the rates be reduced to correspond to the Minnesota basis, they would be so low as to make the business handled under them unprofitable. One of the greatest difficulties confronting the traffic department, arises from the contentions of different jobbing centers for rates that will enable them to distribute goods to the greatest advantage. Jobbing is done, to a considerable extent, at such points as Moorhead, Fargo, Bismarck, Billings, Butte, Helena, Spokane, etc., the merchants at which points endeavor, within certain limits, to compete with the merchants in St. Paul, Minneapolis and other eastern cities. Any change in the rates to one of these points such as Fargo, if rates to others

are not changed, destroys the relation which has existed as between the rates into and out of Fargo with the rates from the Twin Cities and Duluth and into and out of any other distributing center doing business in the same common territory. The rates which were in effect prior to the Commission's order were made on a basis which reasonably met these conflicting claims, and permitted the merchants in the different commercial centers to distribute their goods in territory that was common on substantially an equal footing. This equable basis of rates in the territory west of Fargo was thrown out of adjustment by the rates covered by the Commission's order, and while the changes which were made in the rates to points west of Fargo, partially restored the former conditions to many points, the rates are not equable or fairly adjusted, and, if the present Fargo rates are continued, can only be so adjusted by further reductions; reductions at Fargo and not at Bismarck curtail to that extent the distributing ability of the latter unless offset by reduction in the local rates from Bismarck. If reductions are made to both Fargo and Bismarck, without corresponding changes being made from St. Paul and Minneapolis into territory served in common, the ability of the latter is correspondingly curtailed; that is, the jobbers in North Dakota and west thereof, depend on carload rates into the distributing centers and less than carload rates out of such centers being on a basis that will enable them to compete in territory which is geographically tributary. It would seem, therefore, that the obligation to deal fairly as between different sections and to meet the just demands of competing localities makes it impossible to lower materially the rates within one state and maintain a relative higher basis of rates in other parts of the system.

Q. What position does Butte, Montana, occupy with regard to rate-making west of the Mississippi river and between the Mississippi and the Pacific ocean?

A. The rates from the East (that is, from St. Paul and

Duluth), and from the West (Seattle, Tacoma and Portland on the Northern Pacific) meet at Butte; that is, the eastern rates and the western rates are equal at that point. The situtation at Butte might be described as somewhat similar to the hub of a wheel, with the spokes radiating in different directions. When the Northern Pacific Railway was completed into Butte, in about 1883, there was already at that point a line of railway from the south known as the Utah & Northern, which connected with the Union Pacific on the east and with the Central Pacific on the west. When the Northern Pacific was completed into Montana, the California and the Missouri river lines made the same rates into Butte as were made by the Northern Pacific; and ever since that time the rates from Duluth, St. Paul, Minneapolis, Sioux City, Omaha, St. Joseph, Kansas City, on the one hand, and from Seattle, Tacoma, Portland, San Francisco, Sacramento on the other—

Q. Los Angeles?

A. I was coming to that,—have been the same. Within the last three or four years, the line has been completed from Salt Lake to Los Angeles, and since the completion of that line the rates from Los Angeles to Butte have been the same as from St. Paul to Butte. We can make no change in our rates from St. Paul to Butte without a corresponding change being made from all of the other distributing centers named. This is true with the possible exception of commodities like coal from the East, which is not shipped from the West; and lumber from the West which is not shipped in any considerable quantities from the East; but on the general classes of merchandise the rates into Butte from the East and from the West have always been the same. The rates from Denver, for many years, to Butte have been eighty per cent of the rates from the Missouri river, as the distance from Denver is substantially eighty per cent of the distance from the Missouri river to Butte.

Q. Has Chicago participated in any way in that parity of

rates or the relation of rates, during that period?

A. The rates from Chicago to Butte, via St. Paul, have always been the same as the rates from Chicago to Butte via the Missouri river.

Q. How about Ogden and Salt Lake city, how have their rates been fixed?

A. The rates to Salt Lake and Ogden have, in no cases, been higher from the Missouri river than the rates from the Missouri river to Butte; and the rates from Chicago to Ogden have been the Chicago-Butte rates. The rates from the Missouri river to Ogden are made by deducting from the Chicago-Ogden rates the rates from Chicago to the Missouri river; and as the local rates from Chicago to the Missouri river are higher than the local rates from Chicago to St. Paul, the rates from the Missouri river to Ogden are correspondingly less than the rates from St. Paul to Butte. The rates from San Francisco to Ogden have always been made seventy-five per cent of the rates from Missouri river to Ogden. This, I believe, is based on the distance from the Missouri river and from Sacramento, respectively, Sacramento being a common point with San Francisco. Any reduction in the rate from St. Paul to Butte, under this principle must necessarily be followed by a reduction in the rate from Chicago to Ogden and from the Missouri river to Ogden, and a corresponding reduction from the California-Pacific coast cities to Ogden and Salt Lake.

Q. You say that that common relation of rates from all these various western points to Butte has always existed?

A. Yes, sir.

Q. Rates between the Head of the Lakes and St. Paul and Minneapolis, on the one hand, and Butte on the other, have been changed from time to time within the last twenty-five years, have they not?

A. Yes, sir.

Q. They have been reduced from time to time?

A. A number of times.

Q. How soon has a reduction in your rates from Tacoma and Seattle to Butte and from San Francisco-Missouri river cities and Sacramento to Butte followed the reduction by the Northern Pacific in its rates from its eastern terminals to Butte?

A. As a rule, the change was made simultaneously from all points.

Q. What has been the relation, from time to time, of intermediate rates—rates to intermediate points—with regard to the Butte rate, how have they, if at all, been affected by the reductions from the terminals to Butte?

A. The rates from and to intermediate points have been reduced to correspond with any reductions which have been made to Butte or Helena.

Q. What brought about this condition of affairs, in the first place?

A. When the Northern Pacific reached Helena and Butte, it found a city at Helena of considerable importance, and Butte was at that time a mining camp which was just coming into prominence. Those towns had already established commercial relations with Omaha, on the east, and with San Francisco, on the west, through the medium of the Utah & Northern Railway, extending from Ogden to Butte and Garrison.

Q. And it became necessary—

A. It became necessary, of course, for the Northern Pacific Railway to establish rates that were on equality with the competing commercial centers at the Missouri river and in California.

Q. What I am trying to get at particularly is a designation of the principle that brought it out, whether it was competition of markets or of carriers.

A. It was both; it was competition of carriers, and it was competition of competing markets.

Q. Do you know the fact with regard to whether or not

manufacturers, producers and jobbers have built up their enterprises in these various localities upon the strength of that parity of rates?

A. Yes, sir; a large business has been built up, both from the East and from the West, on the basis of an equality of rates from these various distributing centers into Butte and Helena and other Montana common points.

Q. Have you prepared a statement showing some such reductions as in your judgment would necessarily take place, based upon your experience?

A. Yes, sir. (Producing statement, which was marked Complainant's Exhibit 42—Baird.)

Q. You have produced it, and it has been marked Complainant's Exhibit 42—Baird. Will you explain that exhibit?

A. This statement shows the rates in effect from and to Butte, Montana, and Ogden, Utah; and the basis of the rates is as we have just explained it. Opposite the "St. Paul" there are two rows of rates; that designated as "A" is the existing rates from St. Paul to Butte,—

Q. Under the Commission's order?

A. Under the present rates.

Q. Yes, under the present rates.

A. —those designated as "B" are the rates which would be made at Butte if the class rates as covered by the Commission's order were extended beyond a limit of five hundred miles on the same basis as they have been extended from four hundred to five hundred miles. And, in that connection, I would like to correct the note at the foot of the sheet where it says "B-rates based on legislative scale St. Paul to Butte." That should read "Rates based on the Commissioners' scale." The next double-row of figures, opposite Denver, designated as "A", shows the existing rates from Denver to Butte; and "B" what the rates would be from Denver to Butte if they were made eighty per cent of the rates from St. Paul to Butte, extended

on the basis of the Commissioners' order. The rates opposite Chicago are "A", the present rates from Chicago to Butte, and what they would be on the basis of extending the Commissioners' rates from St. Paul to Butte, and adding the local rates from Chicago to St. Paul. To Ogden, Utah, from Chicago, the rates designated as "A" are the present rates from Chicago to Ogden; those as "B" are the rates that would be in effect by applying from Chicago to Ogden the same rates as from Chicago to Butte, as indicated above. The rates from Omaha designated as "A" are the present rates from Omaha to Ogden; and, designated as "B," would be the rates if the Commissioners' rates were extended from St. Paul to Butte and the rates from Chicago to Butte were made on that basis, and the rates from Omaha to Ogden were made by deducting the rates from Chicago to Omaha as made at the present time. From San Francisco, the "A" rates are the present rates in effect from San Francisco to Ogden; the "B" rates are seventy-five per cent of the rates made from Omaha, as indicated above.

Q. This exhibit is made upon the basis, as I understand it, of the necessity of preserving the relation of rates which has existed between all these distributing centers for twenty-five years, and upon the necessity, also, of producing the rate prescribed by the Commission in the state of Minnesota on the same basis to Butte?

A. Yes, sir.

Q. You have had a large amount of experience with the complaints and protests of shippers and consumers in various localities, I take it?

A. Yes, sir.

Q. What, in your experience, has been and is, the ground of such complaints with regard to rates, as between the reasonableness of a rate of itself and the fairness of the rate as compared with rates given other localities?

A. I have found, as a rule, that the basis for complaints as

to rates was more with respect to the relation between the rates to a given point and the rate to some other point, rather than as to the reasonableness of the rate itself. In very many cases, the people who paid the rate were not particularly interested in the amount of the rate so much as they were in knowing that some other shipper or some other locality was not favored.

Q. Getting a better rate than they were?

A. Yes, sir.

Q. What, in your experience, would be of more damage to the various communities served by the Northern Pacific Company, a uniform elevation of rates, or a lowering in rates in one part of the System and a maintaining of rates in another?

A. I believe that we would have more complaints, on the whole, from an inequality of the rates made by lowering them at one part of the line or in one section and not another than we would have if there was a general reasonable advance in the rates.

Q. Uniform?

A. Uniform, yes, sir.

Q. How are Duluth, Minnesota, and Superior, Wisconsin, situated with regard to each other?

A. They are situated on the opposite sides of the St. Louis bay, and somewhat similar to St. Paul and Minneapolis; the business in the two towns is similar in its character, and they have always been treated the same as if they were a common point, a single city.

Q. How do their conditions, so far as transportation goes, differ?

A. They are exactly similar.

Q. Whether for shipments out or receipts in?

A. Yes, sir.

Q. What do they receive in the way of freight over the Northern Pacific lines, in general?

A. Grain, lumber, livestock, hay, other farm products, and

from the far West lumber and shingles, some of the Pacific coast commodities.

Q. From what points do these receipts come?

A. The grain, from practically all points in Minnesota and North Dakota from which grain is shipped; the lumber is shipped from Cloquet and Little Falls; possibly a little from Frazee or Crookston.

Q. What are their principal shipments to points on the Northern Pacific System?

A. Coal and general merchandise.

Q. To what points of destination do such shipments customarily and generally go?

A. Coal is distributed quite generally to all points as far west as about Jamestown, North Dakota, and the general merchandise is distributed all over the line.

Q. You say that rates in and out have always been equalized as between them?

A. To points west of Carlton, where the line from Duluth and the line from Superior converge.

Q. And that is how far from Duluth?

A. About twenty-three miles from Duluth.

Q. How did rates from Superior to points in Minnesota and beyond westwardly, in force prior to the taking effect of the Commission's order of September 6, 1906, compare with rates now in effect?

A. Exhibit 41 shows the relation between the rates, and that they were higher; that is, they were higher prior to the Commission's order than they are at the present time.

Q. How general a reduction was made from Superior to points in North Dakota as compared to that made from Duluth to points in North Dakota?

A. The reduction from Superior to North Dakota was just the same as the reduction from Duluth, and the change from Superior was made at the same time.

Q. It is 319 miles from St. Paul to East Grand Forks, Minnesota; it is the same distance from St. Paul to Sanborn, North Dakota; East Grand Forks, Minnesota, is upon a branch line; Sanborn, North Dakota, is upon your main line; it is 249 miles from St. Paul to Moorhead on your main line, and Moorhead is upon the state line between Minnesota and North Dakota. What stations are there on your Company's line in North Dakota between Moorhead and Sanborn, that is, between a distance of 249 miles and 319 miles from St. Paul?

A. Fargo, Haggart, Canfield, Mapleton, Greene, Dalrymple, Casselton, Wheatland, Magnolia, Buffalo, Tower City, Orisca, Alta, Gorman, Valley City, Berea, and Hobert, North Dakota.

Q. What stations are there on the Company's branch northerly to East Grand Forks, in Minnesota, between a distance of 249 miles from St. Paul and East Grand Forks?

A. Twin Valley, Highberg, Gary, Fleming, Fertile, Melvin, Kankel, Harold, Crookston, Anglim, Hickson, Freemans, Merrills, Davidson, Nesbit, Cummings, Carthage Junction, Sullivans. There are not station buildings at all of these points, but these are points that are designated as points in the tariffs from or to which freight can be shipped or delivered.

The MASTER: In taking in the last testimony you diverge to Grand Forks from the main line; where do you diverge?

WITNESS: At Winnipeg Junction.

Q. How far is Winnipeg Junction from St. Paul?

A. 223 miles.

Mr. HOW: Then we go twenty-six miles farther before we start with these stations, as we have to go twenty-six miles from there before we get to the state line.

Q. What do these stations that you have mentioned in North Dakota and in Minnesota produce for shipment?

A. Grain and other agricultural products and livestock.

Q. What difference is there in the matter of their general production for shipment between the Minnesota stations that

you have mentioned and the North Dakota stations?

A. In quantity?

Q. No, in character.

A. The productions are the same; that is, the same products are shipped from these stations in Minnesota that are shipped from the stations in North Dakota.

Q. What do these stations consume?

A. Coal, lumber and general merchandise.

Q. How do they differ as between stations in Minnesota and in North Dakota with regard to the articles of consumption?

A. There is practically no difference.

Q. What are their conditions and how do they vary with regard to transportation over your System?

A. The conditions are substantially the same, except as they are modified by the competition of other lines.

Q. Of the Great Northern principally?

A. Of the Great Northern and the Chicago, Milwaukee & St. Paul.

Q. In North Dakota?

A. In North Dakota, and also the Soo Line, in North Dakota.

Q. What justification, in your opinion, exists for installing a higher schedule of rates, eliminating competitive conditions which may apply to certain localities, for the Northern Pacific towns of similar distance from St. Paul and the Head of the Lakes, than for the Minnesota towns?

A. There is no justification whatever; in fact, if the question of competition was eliminated, the rates to the Minnesota towns, being on a branch line and requiring a more expensive service, would, if anything, be on a higher basis.

Q. The rates prescribed by the Commission's order and the act are maximum tariffs; competition, I take it, always results in lowering rates rather than raising them?

A. Yes, sir.

Q. And that is the universal effect at a competitive point, that rates are lowered?

A. Rates are usually lower, relatively, at competitive points than they are at local points, and lower in competitive territory than they are in local territory.

Q. In rate-making is there any rule with regard to the measure of a through rate as compared to the sum of locals comprising the through haul?

A. Yes, sir.

Q. What is the rule?

A. The through rate, as a rule, is not in excess of the sum of the two locals.

Q. As a practical operating matter can there be exceptions to that rule, or is it a rule of necessity?

A. It is a rule of necessity, for the reason that the shippers can take advantage of the two locals by shipping and reshipping when the sum of the locals is less than the through rate.

Q. Have you had any experience with that practically?

A. Yes, sir.

Q. Will you give an example, for illustration?

A. After the Commission's order making rates to Moorhead, we did not immediately reduce any of the rates west of Bismarck, North Dakota, but we were subsequently obliged to make reductions from St. Paul and the other eastern terminals into that territory, as we found that the sum of the local rates to and from Fargo to such points as Dickinson, North Dakota, made less than the published through rates to the same points, and our attention was called to it by a shipment of a carload of nails, I think, from Minneapolis to Dickinson, which was billed locally to Fargo.

Q. On the Moorhead rate?

A. On the Moorhead rate, as covered by the Commission's order; and was billed from Fargo to Dickinson at the full published tariff rate and the sum of the locals was less than the

through rate in effect at that time. That necessitated a reduction in quite a number of the rates from the East to the territory west of Bismarck.

Q. If North Dakota should establish rates on the Minnesota schedule for transportation within its borders, what effect, in your judgment, based upon your experience, would the maintenance of the respective schedules in the respective states have on through hauls across those states?

A. You mean if the rates were established locally in North Dakota on the basis of the Minnesota schedule?

Q. Yes.

A. And in Montana on the same basis?

Q. I was coming to that, yes.

A. The effect would be that it would reduce the through rates from the East to North Dakota and to Montana.

Q. Reduce them how far, necessarily?

A. I believe it would carry the reduction to the entire state of Montana.

Q. And how great in amount would that reduction be?

A. It would be a material reduction.

Q. From your present interstate tariffs?

A. Yes, sir.

Q. If all the states through which the Northern Pacific System runs should establish schedules of rates similar to those in force and proposed for the state of Minnesota and complained of in the bill of complaint in this action, what effect, if any, would the maintenance of these state rates have on rates for transportation between points from one end of your System to the other and between points in any two states?

A. We could not avoid a reduction in practically all of our interstate rates.

Q. That, as a practical railroad matter, apart from the legal proposition?

A. I believe it would be unavoidable; I don't see how we

1479

could help it.

Q. Will you explain, briefly, because I presume it has been explained fully in the Minneapolis-St. Louis case, the principle upon which the rates prescribed by the Commission's order of September 6th and the act of April 18, 1907 are framed? I want to get it into this record as briefly as I can.

A. The merchandise rates are made on the basis of a terminal charge and a haulage charge, which for five miles on first-class freight is 12 cents per hundred pounds; for each five miles beyond the first five an additional hauling charge of .98 of a cent is added, up to two hundred miles; and from two hundred miles up to five hundred miles, an additional haulage charge of .98 of a cent is added for each additional ten miles. The lower classes so obtained are ascertained by applying a percentage of the first-class rate.

Q. And five hundred miles is the limit of territory covered by the order?

A. Yes, sir.

Q. Now, with relation to the commodity or the rates prescribed by the act of April 18th?

A. For wheat a terminal and a carriage charge of 2.7 cents is made for the first five miles, and a varying and decreasing hauling charge is made for each additional five miles; from one hundred to two hundred miles the additional hauling charge is 1.8 cents; from two hundred miles to three hundred miles it is 1.3 cents; and from three hundred to four hundred miles, 1.1 cents.

Q. And four hundred miles is the limit of territory covered by the act?

A. Is the limit of territory covered by the act.

Q. In the absence of competitive conditions which may depress a rate at certain localities, what justification, in your opinion, exists in rate-making for increasing the rate per mile of haul with increasing distance?

A. I do not think that there is any justification.

Q. That is to say, upon a graphic chart showing rates from one end of your System to the other, excepting for competitive conditions or unusual or widely variant operating conditions, a rate would at least go in a straight line upwards?

A. Yes, sir.

Q. And if it varied from the straight line, it would go in a downward curve rather than an upward?

A. The rate of progression is usually downward rather than upward; and I think that is always the case for distance tariffs.

Q. Can you say whether or not there is any universal custom of railroads in that regard?

A. I have never known of a distance tariff being made where the rate of progression increased with the greater distance.

Q. From Moorhead to Oriska, which is in North Dakota, it is a distance of fifty miles; from McHugh to Moorhead (both in Minnesota) it is a distance of fifty miles; what justification, in your judgment, exists for charging a greater rate for the same haul from Moorhead to Oriska than has been charged from McHugh to Moorhead?

A. I do not think that there is any justification.

Q. Do you know, or have you ever known, of any system of rate-making which proceeded upon the theory of charging a higher rate per mile?

A. Not so far as distance tariffs are concerned.

Q. Leaving out competitive conditions?

A. Yes, competitive and commercial conditions.

Q. Now, in the absence of any such justification, what, in your judgment, will be the ultimate effect of the commodity tariffs prescribed by the act of April 18th, and of the merchandise rates prescribed by the Commission, if they will have any effect, upon the long haul business of your Company?

A. I believe that we will ultimately be required to make corresponding reductions in the traffic for greater distances.

Q. And when you speak of corresponding reductions, what do you mean by that, having reference to the fact that it is not justifiable to elevate the rate per mile?

A. What I mean is that we would not, probably, voluntarily make the rates on the basis of the Minnesota rates covered by the Commission's order and the act, unless we were required to do so by compulsion, because we believe that the Minnesota rates are unfair and unremunerative and should not be published and made the basis for all of our interstate traffic; but I believe that, eventually, we would be compelled to make reductions in our interstate rates that would put them on substantially the same basis as the state rates.

Adjourned until Tuesday morning, December 1st.

FEDERAL BUILDING, St. Paul, Minn., Tuesday, December 1, 1908.

The hearing was resumed at 10 o'clock A. M.

JOHN B. BAIRD,
recalled on behalf of Complainant, testified:

By Mr. How:

Q. When you say substantially on the same basis as the state rates, what do you mean by that? That is to say, how would that same basis apply to your long-haul business?

A. I mean that the state schedules, having fixed a hauling charge for the last 100 miles within the state of Minnesota, we could not increase the schedules beyond the Minnesota state lines, for distances beyond the Minnesota state lines, on a basis which would allow us any greater hauling charge for the next 100 miles than we would receive for the last 100 miles in Minnesota; and this principle would be carried right through over the System.

Q. Have you prepared statements and charts exhibiting

the extent of such effect upon rates for your long-haul business?

A. Yes, sir.

Q. I hand you Complainant's Ex. 43—Baird, composed of two sets of sheets, each set consisting of two pages, and a graphic chart; will you kindly explain that exhibit and state what it purports to show?

A. This statement shows the rates on lumber from Tacoma, Washington, to points east of Thorpe, Washington, to and including St. Paul, as compared with the Minnesota legislative rates on lumber for equal distance in Minnesota, and if the Minnesota rates were extended to 1,900 miles which is substantially the distance from Tacoma to St. Paul.

Q. The first two sheets show—?

A. The first two sheets show comparison of the rates on lumber.

Q. And the second two?

A. And the second two show comparison of rates on shingles in carloads, the Minnesota schedules making no difference between lumber and shingles, but the tariffs of the Northern Pacific Railway do make a difference, the rates on shingles being higher than lumber.

Q. Now, the graphic chart shows what?

A. The vertical scale, as indicated on the left-hand margin, shows the rates in cents per hundred pounds, from five cents to fifty-five cents per hundred pounds; and the horizontal scale shows the distances in miles by hundreds from 100 to 1,900 miles. The first line, indicated by "A," shows the rates on lumber and shingles from Tacoma to points east as far as the Minnesota Transfer. Up to a point indicated on the chart as 400 miles, the rates on lumber and shingles from the West are the same. At that point there is a divergence in the rate, gradually increasing until the rate on shingles is ten cents per hundred pounds higher than the rate on lumber. The first

of the two lines shows the rate on shingles, and the second one on lumber. The third line, marked "B," shows the Minnesota legislative rates for a distance of 400 miles, and the dotted line shows the extension of those rates up to 1,900 miles on the basis of the last fifty miles of the schedule. That is, the principle of making the same haulage charge for distances beyond 400 miles as was made for the last 100 miles is observed.

Q. And extended to the extent of the long haul?

A. Yes, sir.

Q. Now, I observe the line "A," both before and after it diverges into two lines as you proceed on the vertical scale which indicates mileage, is by no means a regular line, but is broken by sharp ascents, and the regularity of it is also interfered with by parallel planes. Will you explain what that means and why the rates are so irregular?

A. It will be observed in this chart that the rate per 100 pounds is the same at a point 150 miles as it is at the point 250 miles. That is on account of the fact that, coming east from Tacoma we meet, at Pasco, or at Wallula Junction, Washington, near Pasco, the rates made by the Oregon Railway & Navigation Company from Portland for a shorter distance, and the rates from Puget Sound, therefore, for the first 100 miles east of Hillsdale, Washington (which is the first point at which there is a rate indicated), are the same, and this is on account of those competitive conditions. From the 250-mile point up to the 300-mile point there is an abrupt advance, on account of the fact that we get away from the rates based on the shorter mileage of a competing line.

Q. As nearly as you can.

A. As nearly as we can. Beyond the point marked Concord, Washington, which is in the eastern limits of the state, the line traverses a section of the country that produces practically nothing but lumber and shingles, and these rates from

the 350-mile point up to the 700-mile point were made without reference to any rates that would be required to move any volume of traffic, as there are no shipments of lumber or shingles from Tacoma or Puget Sound points into the territory east of Spokane and west of a point about seven or eight hundred miles from the Sound. Our rate on lumber, established in about 1894, from Puget Sound to St. Paul, was 40 cents per 100 pounds, and at the time that rate was in effect, as there is no lumber produced in the eastern part of Montana, a rate of 35 cents was made effective applying to all points in eastern Montana. That is the rate indicated by the horizontal line between 700 and 1,200 miles. All of the rates east of the 700-mile limit were involved in the recent contested case before the interstate Commerce Commission. In their order in this case they permitted rates to be advanced from Puget Sound to the Minnesota Transfer and St. Paul, from 40 cents to 45 cents per 100 pounds on lumber, and from 50 cents to 55 cents per 100 pounds on shingles. That order also provided that no change should be made in the existing rates at Moorhead, Minnesota, or points west, but that we could grade the rates east of Moorhead from the forty and fifty cents up to the forty-five and fifty-five cents, respectively. The order of the Interstate Commerce Commission fixed the rate on lumber and shingles at Moorhead and also at Medora, North Dakota. West of Moorhead, Minnesota, on lumber, we were required to continue the rates which were in effect prior to October 15, 1907; and west of Moorhead to Medora we were required to continue the rates on shingles as they were in effect prior to October 15, 1907. West of Medora we were permitted to make a differential between the rates on lumber and shingles not exceeding ten cents per 100 pounds. That will account for the fact that the line representing the shingle rates does not correspond exactly west of Medora with the line representing the lumber rates. We in many cases reduced the differential on shingles below the dif-

ferential authorized by the Commission, but the rates on lumber east of the 700-mile point are, as we understand, in accordance with the Interstate Commerce Commission's order in this case.

Q. And the rate on shingles is either according to that order or less than the amount established by the order?

A. Yes, sir.

Q. And those two lines, if I understand your testimony, have been established as limited, at least, by the order of the Interstate Commerce Commission in the Pacific Coast rate case?

A. Yes, sir, in the Pacific Coast rate case.

The MASTER: Is that a recent order?

Q. What was the date of that order? How long have those rates been in effect?

A. The order was made some time in June, but the rates were made effective October 15th, of this year.

Q. With regard to Ex. 44, consisting of three sheets and two graphic charts, will you explain that exhibit?

A. This statement shows the rates in effect on wheat, also on coarse grain, to Minneapolis from distances ranging from 50 to 1,500 miles. First, the rates in effect September 1, 1905—

Q. Before the present rates were made effective?

A. Were made effective, being the present rates.

Q. What is the difference between the rates in effect September 1, 1905, and the present rates, and what was the cause of the difference?

A. At the time the rates were changed, as indicated by the "B" schedule, there were complaints as to the rates in this state, and the matter was before the Railway Commission of Minnesota; in an effort to satisfy that complaint the railway companies made the reduction as indicated, being the difference in the "A" and "B" schedules, the "C" schedule being

the rates as they would be on the basis of the legislative rates, and extended on the same principle for a distance of 1,500 miles.

Q. Now, the first graphic chart shows what?

A. The first graphic chart shows the rates on wheat, the vertical scale, as indicated by the figures on the left-hand margin, representing the rates in cents per 100 pounds, and the figures on the bottom indicating the scale of distances from 100 to 1,500 miles. The line "A" indicates the rates that were in effect September 1, 1905, the line "B" the present rates, and "C" the Minnesota legislative rates, for a distance of 400 miles, as covered by their schedule, and extended on the same principle for distances between 400 and 1,500 miles; that is, by adding the same haulage charge for each 100 miles in excess of 400 that was added between 300 and 400 miles.

Q. Does it appear from your testimony that that is confined to coarse grains and not to wheat?

A. This first one is wheat.

Q. It is "coarse grain" in mine.

A. They have got them reversed, then. The second graphic chart shows the present rates on coarse grains effective September 1, 1905, and the Minnesota legislative rates, the figures on the left-hand margin indicating the—

Q. The same description will apply as applied to the graphic chart with regard to wheat?

A. Yes, sir.

Q. Now, I observe in those graphic charts, respectively, the same irregularity of the rates as you proceed westwardly; at least, as the shipment originates westward; will you explain that?

A. There is substantially no irregularity until west of the 600-mile point. That is the limit of the present production of grain in western North Dakota. After passing that point there is no grain raised in any considerable quantity, or in suffi-

cient quantities for shipment to the East, until about the 900-mile point, which is about Billings, Montana. The rates from Billings were made on substantially the same basis as the rates from points east of the 600-mile point. After leaving Billings, the next district from which any grain would be shipped would be about Bozeman, Montana; and beyond that there would be no shipments of grain east of Spokane, Washington. So that, taking the scale based on the actual shipping points, the western rates are on a basis which compares favorably with the rates in Minnesota.

Q. And it is of no material importance to anybody what the intermediate rates are, the rates are mere paper-rates, as I understand it, in the intermediate territory where there is no grain to be shipped?

A. That is correct.

Q. Now, I refer to Ex. 45—Baird, which consists of two sheets and a graphic chart. Will you explain that exhibit?

A. The statement showing comparison of rates shows the distance tariff rates in Montana, Idaho and Washington. That reads "Montana;" it should be corrected.

Q. The heading there is "Montana, Idaho and Montana;" it should be "Washington."

A. In tariffs from eastern terminals to points in Minnesota, North Dakota, Montana, Idaho and Washington, in effect prior to November 15, 1906.

Q. The date on which the Commission's order took effect?

A. Yes, sir; the rates and the tariffs from eastern terminals to the same points, in effect November 15, 1906.

Q. That is, as governed by the Commission's tariff?

A. Yes, sir; the rates ordered by the Minnesota Commission, as they would be if extended beyond the Minnesota state line on the same basis as for Minnesota.

Q. And those respective series of rates as applied to stations at certain specified distances?

A. Yes, sir, for each fifty miles, from 50 up to 1,500.

Q. The 50 miles is calculated from Minneapolis?

A. Yes, sir.

Q. I find that, for all stations in Minnesota, of course, "C" and "D" are the same. Then I find that beginning with Lyons, North Dakota, and thereafter, "B" and "C" are the same. There is a variance between "C" and "D" between Fife, North Dakota, and Geneva, North Dakota, inclusive; that is to say, between the distances of 250 miles and 400 miles as indicated upon this statement. Now that, I take it, from your previous testimony represents the changes that were made in the tariffs from Minneapolis to points in North Dakota at the same time that you made the changes from your previous rates on account of the Commission's order?

A. Yes, sir.

Q. That is the fact, is it?

A. Yes, sir.

Q. And the reason why "B" and "C" coalesce from Glenullen, 500 miles west of Minneapolis, to the extreme limit of distance shown on your statement, is that you have not made any changes within that district on account of the Minnesota Commission's order?

A. We did not make any changes in that district at the time that we made these changes up to the 450-mile point; subsequently, though (and they are not shown in this chart), we were obliged to make a few changes on account of the fact of the combination of locals on Fargo made lower through rates than the Interstate rates that were in effect prior to the Commission's order.

Q. Those changes have been made subsequently to the Commission's order, but not all of them at the time of the Commission's order, then?

A. That is correct.

Q. Now, with regard to my last question:

Mr. How's last question was read.

Q. That I understand from your previous testimony?

A. Yes, sir.

Q. Now will you describe the graphic chart attached?

A. The chart shows for the line "A" the distance tariff rates in use locally in Montana, Idaho and Washington, and for interstate traffic between those points; "B," the tariff from eastern terminals in effect prior to November 15, 1906, and "C," in effect immediately after November 15, 1906, the date the Commissioners' rates were made effective; and the line "D" represents the Commissioners' rates for a distance of 500 miles and what the rates would be if extended on the same principle for 1,500 miles, the figures on the left-hand margin representing an average rate per 100 pounds of all of the ten classes, for each of the distances from 50 to 1,500 miles. This chart shows a divergence of the lines "C" and "D" at a 200-mile point. If the chart had been made in accordance with the actual adjustment of the rates, this point of divergence would have been at a 240-mile point.

Q. Which is the state line,—

A. Yes, sir.

Q. —the distance of the state line from Minneapolis?

A. But the comparison of rates as shown in the statement attached shows that they were taken for each 50 miles; and the rate indicated by the line "D" is the rate which would be established by the Commission's order at a 250-mile point, and a straight line is drawn from the 200 to the 250-mile point which shows the divergence at the 200-mile point instead of at the 240-mile point.

Q. And that is merely on account of calculating the rates upon each 50-mile basis instead of each 10-mile basis, as provided by the Commission, after 200 miles?

A. Yes, sir

Q. All these statements and charts and all that have been

introduced in evidence through you have been prepared under your immediate direction?

A. Yes, sir.

Q. And you are confident that they state the facts?

A. Yes, sir.

Q. I hand you Complainant's Ex. 46—Baird. Will you explain that exhibit and indicate what it purports to show?

A. The statement shows the present rates from St. Paul, Minneapolis and Duluth to a number of the principal stations west of Minnesota, as indicated; also the proportion accruing to the line in Minnesota, on a mileage basis, as compared with the Commission's rates for the same distance; also showing what the through rates would be to the same stations, based on the Commission's schedule extended beyond 500 miles, and the Minnesota proportion of such schedule, computed on a mileage basis. The stations to which these rates are shown are all indicated and the distance from St. Paul. The class rates are the Western Classification rates from First-class to Class E, and the rates are the rates per 100 pounds for each class to each of these stations. The Minnesota proportion is based on actual mileage, using 248 miles from Moorhead to St. Paul. A column is shown showing one-half of the rates for 500 miles, as prescribed by the Commission's order. This would represent substantially the Minnesota proportion of the Commissioners' rates, if applied to a point 500 miles distant from St. Paul. The rates fixed by the Commission's order for 500 miles are the rates as shown in their schedules, and the Minnesota schedule extended to cover actual distance is on the basis of applying the same principle in making the through rates as has been used by the Commission in making their rates from between 400 and 500 miles, and the last column shows what the Minnesota proportion would be on an actual mileage basis of these extended Commissioners' rates. An average reduction is shown for each station; the amount of this reduc-

tion is obtained by making a total of the present rates—that is, of the ten classes—and a total of the rates which would be in effect if the Minnesota Commission's schedule was extended, and an average of the ten classes for such schedule. The average reduction shown is, therefore, the difference between these two schedules figured on a percentage basis.

Q. One of the chief objects of this statement Ex. 46 is to show that, based upon the present rate to these stations, the Minnesota proportion on a mileage basis is larger than the rate fixed by the order of the Commission for the same haulage within the state?

A. Yes, sir.

Mr. HOW: I offer all of these exhibits, Complainant's Ex. 35 to 46, inclusive.

CROSS-EXAMINATION.

By Mr. O'BRIEN:

Q. Mr. Baird, the rates in force upon the Northern Pacific are not the same in any two of the states served by that road, are they, the local rates?

A. The general basis of rates, as I have testified, is the same east of the Rocky mountains; that is, there is one basis of rates applying in the territory east of the Rocky mountains, and another applying in the territory west of the Rocky mountains.

Q. Are the rates in force upon the Northern Pacific the same in any two of the states served by that road?

A. The foundation for our rates west of the Rocky mountains is a distance tariff. The rates in that distance tariff are the same in all of the states in that district.

Q. Are the rates in force upon the Northern Pacific road the same in any two of the states served by that road?

A. The rates manifestly cannot be the same between a station five miles east of Tacoma and five miles west of St. Paul when the basis for making the rates is entirely different.

Q. Are the rates in any two of the states served by the Northern Pacific Railway Company the same, as now in force?

A. As to all—

The MASTER: Can't that be answered by yes or no, categorically? Then you can make your explanation afterward.

A. They are not the same, as to all of the details; they manifestly cannot be. It would be impossible to make them the same, because they represent different movements of traffic, different kinds of traffic, and traffic moved under different circumstances.

Q. Then your answer is that the rates in no two of the states are the same?

A. As to all of the particulars and as to all of the rates themselves, they are not identically the same.

Q. When you have testified, then, to the uniformity of the rates in force upon the Northern Pacific, you have meant to say that they are uniform, in your judgment, under the particular circumstances governing each rate?

A. They are also uniform as to their general basis.

Q. Now, when you said that the rates upon the Northern Pacific Railway were uniform, you intended to say that they were uniform, in your judgment, relatively, under all of the circumstances surrounding each rate?

A. Yes, as to each particular district.

Q. As to each particular district and as to each particular rate. Now what are the circumstances entering into the making of a rate, what conditions are taken into account in establishing a rate?

A. There are a great many conditions taken into account; the commercial conditions, the competitive conditions and the value of the service.

Q. What do you mean by competitive conditions?

A. The competition of other lines traversing the same section of country, or reaching the same points.

Q. Of other common carriers?

A. Yes.

Q. What do you mean by "commercial conditions?"

A. By commercial conditions I mean the conditions which would limit the amount that could be charged for any particular kind of traffic. I might illustrate that by saying that the price on a certain commodity at St. Paul fixed by the lower rates on cheaper product from another section might limit the amount of freight that could be charged by the Northern Pacific on that commodity.

Q. That is, in order to haul the commodity to get the traffic it would be necessary for you to fix a rate upon the commodity which would enable it to be marketed at the point it left your road?

A. Yes, sir.

Q. That would be a commercial necessity?

A. Yes, sir.

Q. Now, what do you mean by the "value of the service?"

A. I mean that, taking the traffic as a whole, we would endeavor to so adjust our rates that they would be remunerative and net a profit to the carrier.

Q. Now, the last consideration which you have mentioned is in point of fact the first consideration to be examined in establishing rates, is it not?

A. Well, it is a very important consideration always.

Q. Well, is it not true that, supposing you were now entering upon the establishment of a rate-table, you would first ascertain what rate would pay the cost of the service and allow a return upon the investment?

A. No, no, I don't believe that I would.

Q. You would next have to ascertain what special conditions there were which limited your power to make that rate, and those special conditions would be the two other considerations which you have mentioned, commercial necessity or com-

petitive conditions; is not that true?

A. Well, in figuring your rate schedule, we could not first ascertain what the traffic would bear and return a fair remuneration to the Company, for the reason that I have no means of knowing, in detail, just what the cost would be of handling that traffic. I would have to take and adjust the rates relatively as fairly as we could with reference to rates by other lines in the same section, with reference to competition, and what we believed to be a fair basis of rates.

Q. Then, if there were no competitive conditions to take into consideration, no conditions producing what you have termed a "commercial necessity," to take into consideration, you simply would adopt the rates of somebody else?

A. Well, I don't know of any conditions of that kind that have ever arisen. If the Northern Pacific Railway Company was running in Alaska and there were no other railroads in Alaska, I assume it would be possible to ascertain, in building a road, the volume of traffic, approximately, and then adjust the rates, distributing them fairly among the different commodities on a basis that would return a fair remuneration or that would pay the cost of operation and a fair return on the investment; but there are no such conditions as that existing anywhere that I know of.

Q. In answering my question you have assumed that you would be called upon to establish a schedule of rates for a new and untried road in a new and untried country. Assuming that you were now to endeavor to fix a schedule of rates for the Northern Pacific road, which has been in operation for thirty-eight years, with all of the information available, would not the first consideration be the cost of the service and the return upon the investment, and then your attention be directed to questions of competition and commercial necessity?

A. The cost of the service, of course, is a very important consideration, but I have no means of ascertaining what the

cost is of handling any particular item of traffic. For instance, a barrel of flour from St. Paul to Moorhead, I have no means of ascertaining what the cost would be of furnishing that transportation. We endeavor to adjust the rates in a manner in which we believe that they will be remunerative as a whole, and also fair as between the various classes of freight.

Q. Are you able to ascertain the cost of different classes of freight?

A. Not as to each class of freight, no, sir.

Q. You are not able to ascertain the total cost of any class of freight?

A. No, sir; that is, I would not know how, myself, to figure the cost of any class of freight, nor have I been able to get anything which would give me that information.

Q. Then you are unable to form any opinion as to what the net return is upon the wheat carried by the Northern Pacific Railway in the state of Minnesota per annum?

A. I can form a general opinion based on the results of handling all of the business of the Northern Pacific Railway; we know, approximately, what the net result is of handling all of the business, and we know that if all of the business of the Road was based on the wheat rates of the state of Minnesota our revenue would be reduced to an extent that there would be, we believe, no net return.

Q. Have you any way of ascertaining, approximately, what the net value to the Northern Pacific Road is of the wheat carried by it during any one year?

A. Only in the general way as I have indicated; that is the only way that I have.

Q. And for all that you know, whatever return is made by the Northern Pacific upon its Minnesota business may be upon articles other than wheat?

A. Well, the rates in Minnesota generally are very low as compared with the rates over the entire System, and if there

is any profit made in Minnesota based on the returns from the entire System it is very small, we believe, on any class of business.

Q. I will repeat the former question.

A. Maybe I didn't understand it.

Mr. O'Brien's former question was read.

A. What do you mean, Mr. O'Brien, by "return?"

Q. Assuming that there is a net profit to the Northern Pacific Railway Company upon the business which it transacts in Minnesota, so far as you know, that may be entirely derived from freight other than wheat?

A. That is correct.

Q. Or it may be entirely derived from wheat?

A. That is correct.

Q. Or wheat may—

A. No, I will modify that: I don't think it could be derived from wheat and not from other commodities which take substantially the same rates as wheat and which are handled under substantially the same conditions.

Q. Well, then, such profit may be derived entirely from one class of freight?

A. That is possible.

Q. Or it may be that any one class is carried at a loss?

A. I don't believe that any class of freight, under our present schedule of rates, is carried at a loss.

Q. If you do not know the cost of any one class of freight, approximately, how can you form that belief?

A. Only by the results which are obtained from those rates.

Q. You haul coal, under a contract with the Milwaukee road, at 40 cents per ton, from Duluth to the Minnesota Transfer?

A. That, I believe, is the minimum; there are other rates that are higher than that.

Q. Your commercial rate for coal is about 90 cents from

Duluth to the Minnesota Transfer?

A. That is soft coal; $1.25 on hard coal.

Q. Is it not?

A. 90 cents on soft and $1.25 on hard.

Q. What would be the rate upon wheat for a haul of 150 miles?

A. By the Commissioners' schedule?

Q. No, no, by your schedule.

A. Our present schedule?

Q. Yes.

A. I believe it is 10 cents a hundred.

Q. And that would be how much per ton?

A. $2 a ton.

Q. $2 a ton?

A. Yes, sir.

Q. Now, we have, then a rate upon coal under a contract with the Milwaukee road for 150 miles at 40 cents per ton, a commercial rate upon coal of 90 cents per ton for the same distance, and a wheat tariff of $2 per ton; are they all three profitable?

A. I wouldn't like to say that they were all three profitable.

Q. You said, a moment ago, that you had no rates in existence which were not remunerative, so far as you knew?

A. There is no published tariff covering the contract rates with the Milwaukee & St. Paul. I was referring to the tariff rates.

Q. You were referring to your tariff rates?

A. Yes, sir.

Q. And you say at this time you have no published tariffs that are not remunerative?

A. I expressed that as an opinion.

Q. Now, I don't want to entrap you. Do you intend by that to include the published tariffs on the merchandise?

A. Present published tariffs upon the merchandise? Do you mean in the state of Minnesota?

Q. Yes.

A. Yes.

Q. That is one of the tariffs that you are attacking in this case. You say that is remunerative?

A. It is remunerative to the extent that I believe that it pays at least the cost of the service.

Q. Don't you think that it pays more than the cost of the service?

A. Possibly it does.

Q. Now, if you believe that it pays the cost of the service, you have an opinion as to the cost of the service, have you not?

A. Only in a general way. Of course, we know what the total operating expense is, but as to how that is divided up as between the various classes of traffic I am unable to ascertain.

Q. Did you ever make an attempt?

A. I have asked for information at various times as to the cost of handling particular kinds of traffic, but have never got any figures that were definite or satisfactory.

Q. You must have, however, assumed some cost when you fixed a rate of $2 a ton upon wheat and 90 cents a ton upon soft coal?

A. The 90-cent rate per ton on soft coal, of course, is governed by conditions that do not surround the making of rates upon wheat from local points in the state.

Q. Well, is the cost of the service ever taken into consideration?

A. Yes, very frequently.

Q. Before it is taken into consideration the cost, approximately, must be ascertained?

A. Certain cost must be approximately ascertained; we can't always obtain all of the cost. I might explain that, a lit-

tle, by stating that in a general way there are two classes of traffic: One is the general traffic, that that is moving continuously and in regular volumes every day, and then there is what you might call exceptional traffic or occasional traffic, that moves only under certain conditions. In the old days, we used to make rates to Japan, for instance, and the rates, of course, were governed by the competition of ocean lines, and it was a question whether it would go by the way of New York or whether it would be moved overland. Now, in many cases there would be movements of empty cars west to the Pacific coast, and then the question would arise whether the moving of that freight in those cars, or the moving of the cars themselves empty, was in the best interests of the Company and whether the rate which we could obtain for that freight in those cars paid the additional direct expense for moving it. Now, in a case of that kind, it is possible, we believe, to find out what that additional direct expense is. That is what I meant by obtaining the cost of the transportation.

Q. Mr. Baird, is not this true: that when you say you can't ascertain the cost of moving any particular class of freight, you mean that you can't ascertain to your satisfaction the exact cost?

A. Yes, sir.

Q. But there is no doubt in your mind that the approximate cost can be ascertained, is there?

A. The approximate cost for handling all of the traffic, as a whole, I believe can be ascertained, but not as to each particular part of that traffic.

Q. The exact cost of handling all of the traffic can be ascertained, can it not?

A. By figuring up the total of expenses for handling the traffic.

Q. And is it not possible to ascertain, approximately, the cost of each class?

A. Well, I am not able to answer that question.

Q. Well, I am asking you for your judgment upon it,—you make the rates.

A. The cost for handling any particular traffic may fluctuate a great deal with the varying conditions.

Q. Yes, of course it may. Now, I am speaking of ascertaining the approximate cost of a class of traffic. Mr. Baird, let me give you an illustration: Your road hauls train loads of coal from the Head of the Lakes; is that true?

A. Yes, sir.

Q. The cars are shunted onto the dock and are loaded by machinery, and then a solid train-load of that coal, with possibly five employes, leaves Duluth and comes straight through to the Minnesota Transfer?

A. Comes to St. Paul and Minneapolis; it is divided at White Bear, probably, and comes in train-loads that way.

Q. Well, comes in train-loads to White Bear?

A. Yes.

Q. The loading of that train costs the railroad nothing?

A. The loading of the coal in the cars costs the railroad nothing.

Q. The unloading of the coal from the cars costs the railroad nothing?

A. No, sir.

Q. You know exactly the wages of the men employed in handling that train?

A. It can be ascertained.

Q. You know exactly the value of the equipment constituting that train?

A. Yes, sir.

Q. You know exactly the time occupied by that train in coming from Duluth to St. Paul?

A. Yes, sir.

Q. Do you claim that it would be impossible to ascertain,

approximately, the direct expense attached to the movement of that coal?

A. No, sir, I do not.

Q. In the western part of the state, great train-loads of wheat come from the Red river valley to Minneapolis and Duluth, do they not?

A. They may be train-loads by the time they reach Staples, but they are gathered up in separate carloads at each of the local stations, or, maybe, two or three cars at a time.

Q. Staples is a divisional point upon your road?

A. Yes.

Q. And through train-loads of wheat from Staples to Minneapolis and to Duluth are constantly moving during the wheat season?

A. Yes, sir.

Q. You know the tonnage upon that train, or can know it?

A. It can be ascertained.

Q. And you can also ascertain the exact wages paid to the men employed upon that train?

A. Yes, sir.

Q. And the direct cost of handling that train can be ascertained as easily as a grocer can tell exactly what he paid for a barrel of sugar?

A. I don't handle such things myself, but I believe that is correct.

Q. Train-loads of logs pass over your road, do they not, also?

A. Yes, sir.

Q. And then, upon the other hand, you have trains that are carrying broken lots of merchandise?

A. That is correct.

Q. In which merchandise destined for different points of the road is sometimes contained in the same car?

A. Yes, sir.

Q. Interstate freight is very commonly freight of a character I have last described—broken?

A. A large part of it is, yes; that is, a large part of what is known as general merchandise movement is broken.

Q. And a large amount of freight that I have been referring to as the freight which can be carried at the lowest cost is local to the state of Minnesota, such as coal and lumber and wheat?

A. That is, it can be carried at the lowest cost for a part of the haul, not always the whole part of the haul, that is, the whole haul.

Q. Now, do you not take those different conditions into consideration in establishing a rate?

A. If we were establishing a new rate on something that hadn't been shipped before, that is, on a commodity that was shipped in large quantities but it was a new item of traffic, we would, of course, have to figure on what we believed would return a fair profit on the business.

Q. Let us imagine that the territory along your road in the neighborhood of Brainerd is found to contain large deposits of iron ore, and your road should become, from that point to the Head of the Lakes, an ore-carrying road, would you not take into consideration the cost of the service and the return to the Road upon that class of freight?

A. I think the first consideration in that case would be to put our rates relatively on as fair a basis to the Company and to the producers as the rates in other sections of Minnesota.

Q. Well, what would constitute fairness to the Company?

A. Why, a rate that would pay us relatively, conditions considered, as other classes of traffic handled in the same volume between the same points.

Q. How could you tell that without ascertaining the cost of the service?

A. Why, by assuming that we are getting a fair return

on what we are carrying.

Q. Well, by assuming that your average return is the average cost, or by assuming that your rate upon merchandise or your rate upon coal is the average cost?

A. By assuming that the business in general paid a fair return considering the conditions under which it was handled.

Q. Well, would you assume that the average rate charged upon the Northern Pacific road per ton per mile formed a fair basis for ascertaining the cost of any service?

A. Do you mean the average ton per mile derived by the Northern Pacific Railway for all of its traffic?

Q. Yes.

A. Not necessarily, no.

Q. Well, what would you assume? Now, you are going to make an ore rate—

A. Yes.

Q. —from Brainerd to Duluth; what would you first ascertain,—what the other roads were charging?

A. That would be my first inquiry, what the other roads were charging for similar service.

Q. Well, now, after you had ascertained that, would you inquire any further?

A. Not if that would return us approximately the same revenue that we are getting on other commodities handled under substantially similar circumstances in large volume.

Q. You would next compare that rate with your present rates?

A. Yes.

Q. And having ascertained that it compared favorably with your present rates, you would adopt it?

A. We probably would.

Q. Entirely irrespective of the cost of that particular service?

A. Not entirely irrespective, because we would endeavor

to get at least a rate that would more than pay the cost of the service.

Q. How would you know, unless you came to some conclusion as to what the cost of that service was?

A. Well, there are some classes of traffic that pay rates which return a small margin of profit, that is, that we believe that the margin of profit is small; and there are other classes of traffic which pay a fair margin of profit, and we average—we must average the total business, as we can't expect to get always as remunerative rates on one class of traffic as we get on the total business.

Q. So that you do come to a conclusion in your mind as to the cost of each class of business?

A. In a general way.

Q. Well, now, in comparing these rates and discussing the rates as proposed, you have not taken that question into consideration at all in these exhibits you have produced, have you?

A. Not in those exhibits, no, sir.

Q. So that, in coming to your conclusion or in giving your testimony here, the cost of the service as to any one of these classes does not enter into the consideraion?

A. Not the actual cost as to handling any particular item of traffic covered by those exhibits.

Q. You haven't taken that into consideration at all?

A. Not in making those statements, no, sir.

Q. Nor have you taken into consideration the cost of all of the business transactions in Minneapolis?

A. No, sir.

Q. But you have prepared these tables and presented them entirely with reference to what you think would be the effect upon your entire road?

A. Yes, sir, that is what was principally intended to show by those statements.

Q. And it is, in effect, your judgment as to what may happen in the future?

A. What probably will happen in the future if those rates are adopted.

Q. Now, I gather from your testimony, that if there is any one thing that is true with regard to railroad rates in general and the Northern Pacific road in particular, it is that they all bear as far as possible a proper relation to each other?

A. We try to fix the rates on the different commodities so that they will bear some relation.

Q. And that general conditions are the same as to all of these rates, in other words, a disturbance of one would have just as an injurious effect as a disturbance in any other?

A. Do you mean a disturbance of a rate on one commodity?

Q. Yes.

A. Well, the effect, of course, would be injurious, but I don't know that it would, necessarily, absolutely cause a change immediately.

Q. Well, let us say that relatively the effect would be the same. I suppose a change in a commodity of which you carried a very small amount would not be as great as a change in a commodity of which you carried a great deal?

A. That is correct.

Q. But relatively it would be the same?

A. Yes, sir.

Q. That is, the same principle runs through it all?

A. Yes.

Q. Now, you have introduced a great deal of evidence here for the purpose of showing that the rates upon your entire line will be disturbed by the enforcement of the commodity rates, the act of April 18th?

A. We believe that that would be the ultimate result.

Q. Do you assume to predict any time within which that would come?

A. Well, we can only judge by what has occurred in the past.

Q. But the merchandise rates have been in effect upon your road for two years now, and that result has not followed?

A. Well, the merchandise rates, as fixed by the Commission, have been in effect for nearly two years; at the same time, as stated in the evidence, we did at that time reduce the merchandise rates to points west as far as Bismarck. We found, afterwards, that that reduction was not sufficient and we had to make further reductions; and the adjustment at the present time in the merchandise rates is not satisfactory to the communities served and they are pressing us, very strongly, for reductions in those rates to correspond with the reductions which have been made in Minnesota.

Q. Is it not true that you extended the rates as prescribed by the order of the Commission to Bismarck because at that point the rates practically met, as it is called, your former rates and the rates established by the Commission?

A. Oh, no, they wouldn't meet there at all. They would extend for 1,500 miles beyond.

Q. Well, we will come to that afterwards. And is it not true that your rates in North Dakota are being readjusted as a result of the extension of the Soo road and the Milwaukee road into that territory?

A. No, sir.

Q. That has nothing to say to it?

A. Not at the present time.

Q. Well, but it has since these rates went into effect?

A. No, no, I don't think that the extension of the Milwaukee road through South and North Dakota or the Soo Line north of Bismarck, has caused us to make any change, or is likely to cause us to make any change, in our merchandise rates.

Q. Is not the Soo road the short line to many of those

points you spoke of yesterday?

A. It has the short line to Bismarck, and also to Valley City.

Q. And that always affects rates, does it not?

A. To a certain extent, yes; the short line usually fixes the rate.

Q. But beyond this portion of North Dakota, which is practically of the same character as western Minnesota, you have made no changes in your merchandise rates as the result of the adoption of the Commission's rates?

A. Oh, yes, we have. We have made changes west of Bismarck, I think almost to the Montana line; and the rates still in that country are too high, because on some classes of freight, to-day, you can ship merchandise in less than carload lots to Fargo and reship it in less than carloads from Fargo to western North Dakota at rates which are as low, and in some cases a little lower, than the rates from St. Paul; and that condition should not exist.

Q. How many changes have been made in your schedule of rates from St. Paul to points west of Bismarck within the last two years?

A. We have reduced the rates on certain classes from St. Paul to stations in North Dakota, I think up as far as the Montana line; we haven't reduced all of the rates in that territory.

Mr. HOW: Will you produce a tariff-sheet showing the old rates and those established since the order of the Commission for all those stations in North Dakota?

WITNESS: Yes, sir.

Mr. HOW: I should like to have that produced.

Q. Is it not true that the changes which you speak of, made since the order of the Commission, to points west of Bismarck, are confined to articles of merchandise handled by grocers?

A. No, sir, it is not true.

Q. What other articles are included?

A. The change was not made with reference to any particular article; it was made covering all the freight of one class or two classes or three classes, as the case may be.

Q. Is it not true that that change was made at the request of the jobbers in St. Paul, Minneapolis and Duluth?

A. They may have made a request for a change, but it wasn't made by reason of their request. It was made to protect ourselves against reshipments from short-haul junction points. Under the old basis of rates, carload freight of certain commodities could be shipped to Fargo or Moorhead, over the Milwaukee road, for instance, and shipped west to Dickinson on our line, and the through rate by the combination of locals was less than our published tariff rate from St. Paul.

Q. And was it not made for the purpose of enabling the jobbers in the Twin Cities and Duluth to compete with the jobbers located further west?

A. No, sir.

Q. Was it made for the purpose of permitting the jobbers west to compete with the jobbers in the Twin Cities?

A. No, sir.

Q. It had no reference to either?

A. Well, that may have been incidental; it may have had that effect, of protecting the St. Paul jobbers, but it wasn't made for that purpose.

Q. What difference did it make to you whether they shipped upon the two locals or shipped upon a through rate that did not exceed the two locals?

A. In one case, if it was shipped over the Milwaukee-St. Paul, for instance, to Fargo, and shipped west to Dickinson on our line, we would receive a local rate west of Fargo and would be deprived of the haul of that freight from St. Paul to Fargo. Naturally, we were interested in having the rates adjusted so that that condition could not exist.

Q. It was for the purpose of holding the—

A. Holding the traffic to our own line.

Q. Holding the traffic.

Mr. How: Preserving their interstate business.

WITNESS: Yes.

Mr. How: Which I assume they are entitled to preserve.

Mr. O'BRIEN: I hope they do, myself.

Adjourned until Wednesday morning, December 2d.

FEDERAL BUILDING, St. Paul, Wednesday, Dec. 2, 1908.

Hearing resumed at 10 A. M.

JOHN B. BAIRD,

recalled for further cross-examination, testified:

By Mr. O'BRIEN:

Q. I understand, Mr. Baird, that in preparing the tables which you have presented, being Exhibits 35 to 46, inclusive, no consideration was given to the relative cost of the service?

A. No, not in the preparation of those tables.

Q. They are merely a comparison of rates, based upon the positions which you have described?

A. Yes, sir.

Q. And none of those tables contain data from which the cost of the service required to earn the rate could be determined?

A. That is correct.

Q. Nor do any of those tables contain data from which could be established the justness or unjustness of any of those rates, in and of themselves?

A. No, only by comparison.

Q. Only by comparison?

A. Yes.

Q. You are aware that the courts have decided, very often,

that the justness or unjustness of a rate cannot be proved by mere comparison with other rates, are you not?

A. No, sir; I was not aware of that fact.

Q. You are aware of the fact that the Interstate Commerce Commission has, more than once, decided that the carrier has no right to take into consideration the protection, or building-up, of any particular community?

A. I can't say that I am.

Q. You have not, in preparing any of these tables, attempted to follow any rule, established either by the Interstate Commerce Commission or by any decision of the courts of the United States, have you?

A. No, sir.

Q. And in all of the comparisons which you have made you have assumed that the comparison was to be made by extending the Minnesota schedule in the manner that you have described?

A. Yes, sir.

Q. That is, you have taken the smallest addition which is found in those tables for additional haul, and have applied that for the extension?

A. Yes, sir.

Q. It is true, is it not, Mr. Baird, that after a certain distance has been reached in a haul, possibly the length of the ordinary engine-run, the greatest economy of service has been reached?

A. That is true, although I would not want to limit it to the ordinary run of one engine.

Q. The ordinary run of one engine is from 100 to 140 miles?

A. Approximately, yes, sir.

Q. Supposing we double that, would not the greatest economy be reached?

A. Well, I don't believe that I am competent to testify

as to the economies of operation.

Q. If you are not competent to testify to the economies of operation, how are you competent to prepare a schedule of rates for hauls of different length?

A. Because the matter of economies of operation does not come within my province, that belongs to another department.

Q. Well, do you think that it would be fair to assume that when a haul of three or four hundred miles is reached the greatest economy in hauling is reached?

A. I think that that would be a fair assumption, unless there were some exceptional circumstances.

Q. Will you please take a sheet of paper and make a calculation for me? What is the rate allowed for merchandise of the first class for a haul of 500 miles by the Commission's order?

A. 74.7 I think.

Q. That is how much per ton?

A. That is $14.94 per ton.

Q. For 500 miles?

A. Yes, sir.

Q. That is how much per mile?

A. Per ton per mile?

Q. Per ton per mile.

A. That would be about 2.98 cents per ton per mile.

Q. Based on that calculation, what would be the rate to Butte from St. Paul?

A. About $8.36 per hundred, first class.

Q. Will you please give the actual rate in force on your road from St. Paul to Butte?

A. $2.25 a hundred.

Q. Then by ascertaining the lowest rate per ton per mile fixed by the Minnesota schedule for Minnesota business and applying that rate to the traffic from St. Paul to Butte, you would obtain a rate more than fifty per cent higher than the

present interstate rate maintained by your Road?

A. It would be a little less than fifty per cent; yes, it would be approximately one hundred and fifty per cent of our rate.

Q. Do you know of any warrant, under any decisions of the Interstate Commerce Commission or of any of the authorities of the United States, which justifies you in making the extensions of the rates upon the assumption found in your tables rather than upon the assumption which I have just suggested to you?

A. I do not.

Q. Now, will you turn to the terminal tariff maintained by the Northern Pacific Road upon commodities in Minnesota?

A. I think I have what you want.

Q. What is the terminal rate upon wheat and flour for a haul of 200 miles by the terminal rates established by the Northern Pacific Railway Company and now in force?

A. Ten cents per hundred pounds.

Q. What is the rate for a haul of 300 miles by that same tariff?

A. Eleven cents.

Q. The additional amount required by the Northern Pacific Railway Company for the haul of between 200 and 300 miles is one cent per hundred pounds?

A. That is right.

Q. Which would be 20 cents a ton?

A. Yes, sir.

Q. Or two mills per ton per mile?

A. That is right.

Q. By Chapter 232, what rate is allowed for the haul of wheat 200 miles?

A. 9.6 cents.

Q. And for 300 miles?

A. 10.9 cents.

Q. So that, for the additional haul between 200 and 300 miles (amounting to 100 miles), the State allows by Chapter 232 three-tenths of a cent more than the Railroad Company had established by its terminal rates?

A. That is correct, yes, sir.

Q. If you tested the terminal rates put in force by the Northern Pacific Railway Company by the same method which you have attempted to test the State rates in your Exhibits 35 to 46, inclusive, using for that purpose this terminal rate, you would arrive at a greater discrepancy between the present rates, maintained from here to the coast, than you have in your exhibits?

A. That is correct, yes, sir.

Q. And that applies to every one of your exhibits and every comparison that you have made?

A. I wouldn't want to say that without comparing the figures, and I have not done so.

Adjourned until Thursday, December 3rd, at 10 A. M.

FEDERAL BUILDING, St. Paul, Minn., December 3, 1908.

The hearing was resumed at 10 o'clock A. M.

JOHN B. BAIRD,

recalled on behalf of Complainant, testified:

RE-DIRECT EXAMINATION.

By Mr. How:

Q. Mr. Baird, you testified, on cross-examination, that the rates are not precisely alike in any two states upon the Northern Pacific System, but that the basis of the rates is the same. Now, are the rates in any one state all alike for the same distance under all conditions?

A. No, sir, they are not.

Q. And why are they not?

A. There are generally two bases of rates: One a distance tariff. The distance tariff applies between all points in the state of equal distance. The other basis is the terminal rates. The terminal rates vary according to the circumstances surrounding the movement of the traffic, that is, the competition with other lines, the fact that another line may be shorter and therefore fix the rates to the terminals; and it is also a fact that we make rates from the country points to Minneapolis, St. Paul and Duluth, for instance, on grain, on the same basis.

Q. Although the distance is different?

A. The distance to those points is different.

Q. The distance to those points from the common shipping point?

A. From the common shipping points is different. Under those circumstances, the terminal rates, of course, are not exactly on the same basis, but we have found it necessary to offer the shippers the benefit of competing markets.

Q. Then by saying that the basis of the rates in each of these states is the same, I gather that you mean that the distance tariffs are the same and that the terminal tariffs are the same unless controlled and affected by competitive conditions either of carriers or markets?

A. Yes, sir.

Q. I might, perhaps, ask if the same principle applies all over the System, different parts of the System.

A. That principle applies generally all over the System.

Q. Reference has been made continually to the Western Classification; what do you mean by "classification?"

A. Classification is the grouping together, in one of several classes, of the various articles of commerce.

Q. And what is its purpose?

A. Its purpose is to fix the rates on those commodities.

Q. And why are certain commodities put into one class and certain commodities put into another class?

A. The classification of these various articles is not made in a haphazard manner, but is the result of custom, experience and judgment of a great many traffic men. The classification must necessarily discriminate between articles shipped under different conditions, also as to their value and as to the volume of the traffic; for instance, the classification on silk goods in carloads would be first-class; of nails in carloads would be fifth-class; of sand in carloads, would be Class E, which is the lowest class in the classification. The classification is made to fit the conditions in the section of country in which it applies. There are three classifications in the United States; one in the section east of Chicago and St. Louis and north of the Ohio river, known as the Official Classification. In that section the iron industry, for instance, is very important, and iron articles are important items of traffic; therefore, in making the classification on iron articles, the tonnage being heavy, the class is relatively lower than it is in the Western Classification.

Q. What are the other two classifications besides the Official?

A. The other two are the Southern and the Western. The Southern applies in the territory south of the Ohio river and east of the Mississippi. In that section cotton and articles manufactured from cotton are important commodities; the tonnage is relatively heavy, and the classification made in that territory is made with reference to the value of the commodity, the volume of the tonnage and as to what, in the judgment of the traffic officers, would be a fair division—a fair apportionment—of the total transportation charge among these various commodities. For that reason, the classification on articles manufactured from cotton is relatively lower in the Southern Classification territory than it is in the Western. The Western Classification is in effect west of Chicago and west of the Mississippi river, and is in use by several hundred rail-

roads. The making of the classification on the various commodities is not, therefore, the judgment of any one man or any set of men, but is the combined judgment of all of the traffic men in that section and is made after long experience in the handling of the traffic. Now, it might be said that the apportionment of the total transportation charge among the various classes of merchandise and commodities that are handled in the state of Minnesota is not the individual judgment of the traffic men of the Northern Pacific Railway, but is the combined judgment of a great many traffic men who are connected with railroads operating in the same section of the country; that is, states in the Mississippi and Missouri valleys, where the conditions are substantially the same and where the agricultural products are the important articles of transportation.

Q. A comparison of the tariffs for the first class and the fifth class shows that those of the first class are very materially higher than those of the fifth; for five miles, for instance, under the order of the Commission, 12 cents is allowed per hundred pounds for the first class and only 4.8 cents for the fifth class. Am I right in assuming that the different considerations which lead the trafficmen to place different articles of merchandise in these different classes is recognized by the Commission in making its rates as between the classes?

A. Yes, sir; it has been in this schedule of theirs.

Q. And that explains why the fifth class tariff is made so much less than the first class?

A. Yes, sir.

Q. The value of the commodities included within the respective classes, the amount in gross of income expected to be derived by railroads in general from the transportation of the different classes, and other conditions which, in the combined judgment, founded upon the experience of the trafficmen, lead them to think that it is worth more and ought to bear more

to transport the first than the fifth?

A. That is correct. I think that might be illustrated by taking an article of each class. For instance, a carload of silk. If we should have an accident and dump such a car off a bridge into the river, we might be called upon to pay a loss of fifteen or twenty thousand dollars. If the same accident happened to a carload of nails, the loss would probably not be to exceed five or six hundred dollars. Of course, that is approximate, I don't know exactly the price of nails. But if that accident happened to a carload of sand, the owner would probably say, "Take the sand, I have plenty more." And therefore the risk is a very important item in the handling of commodities of this kind.

Q. I suppose first class uniformly requires a better and more expensive class of equipment for its transportation than the fifth class?

A. Yes, sir; in handling, for instance, a carload of silk, we would select the very newest and best equipment we have, understanding the risk in handling and that it is much greater than for ordinary merchandise.

The MASTER: Silk would be in the first class?

WITNESS: Yes, sir.

The MASTER: Mention some article in the fifth class.

WITNESS: Nails—a carload of nails, or a carload of sugar would be fifth class.

Mr. O'BRIEN: I think a carload of silk wouldn't be in the first class.

WITNESS: It would take one rate for any quantity. There is no carload of first class in any quantity.

By Mr. O'BRIEN:

Q. Silk, if carried in carload lots, wouldn't be classed in the first class?

A. Yes, it would; it would be classed as first class; that is, silk goods would be classed as first class in any quantity. There

is no carload rate for silk goods other than first class.

Q. Is there such a thing as a carload of silk?

A. Oh, yes, we have handled a great many carloads of silk; especially raw silk.

Q. And they are carried in carload lots at first class rates?

A. They are carried in carload lots, and if subject to classification are carried at first class rates.

Q. Well, is that the fact, that they have been carried in carload lots at first class rates?

A. I couldn't say, without looking it up, whether they had been or not.

Q. I am simply asking for information, because I didn't suppose that there was such a thing as a carload carried under first class rates, those all being less than carload lots.

A. Yes; we frequently have carloads of commodities that take first class rates in the classification.

By Mr. How:

Q. You and counsel for the defendants indulged in some figures, yesterday, with regard to the rate allowed by the Commission for a haul of 500 miles, the extension of that rate to Butte, Montana, as compared with the present rate of the Northern Pacific Road to Butte, Montana. Have you been over those figures since your testimony?

A. Yes, sir.

Q. Have you made a new calculation?

A. Yes, sir.

Q. Will you state the result of that calculation, made by yourself when you had time to do it?

A. Yesterday I inadvertently computed the rate to Butte, Montana, on the basis of a rate per ton per mile and figured from that the total rate per ton, and, instead of dividing by two thousand, to get the rate per hundred pounds, I divided by one thousand, which made—

Q. You divided by 10. You figure the rate per ton, and

then, to get the rate per hundred pounds, you divide by 20?

A. I divided by 10 instead of dividing by 20; making the Commissioners' schedule, first class, for 500 miles, 74.7 cents, and deducting a terminal charge allowed by the Commission of 11.02 cents.

Q. Why do you deduct that terminal charge?

A. That is the deduction which is made by the Commission, or, in other words, it is the total terminal charge included with the haulage charge for the first five miles.

Q. How does that terminal charge vary between a five-mile haul and a 500-mile haul in the Commission's schedule?

A. They use the same terminal charge.

Q. How ought it to vary, in your judgment, as between a five-mile haul and a 1,130-mile haul, the distance to Butte?

A. The terminal charge would, for that length of haul, be distributed over a greater distance.

Q. Yes, but the aggregate amount of the terminal charge is unvarying?

A. It is unvarying according to the Commissioners' schedule. Deducting that terminal charge it leaves a haulage charge of 63.68 cents for the first 500 miles; and, using the basis for calculating the Butte rate, as was used by Mr. O'Brien (that is, taking 1130/500), it would make the total charge for haulage for that distance $1.43; and adding the terminal charge of 11.02 cents, makes, in round numbers, a total first class rate of $1.54. The present first class rate to Butte is $2.25. This would be a reduction of 71 cents per 100 pounds in the present rate.

Q. That is to say, you take the Commission's extended rate of 74.7 cents, deduct 11.02 cents, terminal charge allowed by the Commission in its schedule, and it gives you 63.68 cents haulage charge per hundred pounds for 500 miles, which means a haulage charge of .127 cents per hundred pounds per mile; you multiply that .127 cents by 1130, the mileage to Butte,

which gives you $1.43 and .41 of a cent; you then restore the terminal charge, giving you an aggregate charge for haulage and terminal service of $1.54 per hundred pounds for the St. Paul-Butte transportation. So that upon Mr. O'Brien's theory (upon which he examined you) the Commission has reduced the present rate of the Company for that distance 71 cents per hundred pounds?

A. Yes, sir, on first class freight.

Q. On first class merchandise, for that distance?

A. Yes, sir.

The MASTER: Mr. How, the Commissioners' terminal charge is the first five-mile charge, is it?

Mr. HOW: No.

The MASTER: Let me see. I haven't it before me just now.

Mr. HOW: If I may be permitted to explain that: The second five-mile haul is .98 of a cent; so is the third; so is the fourth, and so is the fifth. That is constant,—.98 of a cent for each five miles. Now the first five miles gets 12 cents. You therefore subtract that .98 of a cent, which is the constant haulage charge for each five miles, and you have left 11.02 cents for the terminal charge.

Q. Some further reference to figures was made in your cross-examination of yesterday, for the purpose of comparison of the additional amount required by the Northern Pacific in its terminal charge for a haul of between 200 and 300 miles; reference was made to Ex. No. 5 attached to the bill of complaint, and it is elicited that the terminal charge upon wheat presently made by the Northern Pacific Railway Company per hundred pounds, for a distance of 200 miles, is 10 cents, and that the present terminal charge of the Railway Company for the same article, for a distance of 300 miles, is 11 cents. Comparison is made between that added charge of one cent a hundred pounds for 100 miles, made under the present tariff of the Company, with the one cent and three mills allowed by

Chapter 232 of the laws of 1907 by the legislature for the same haul. The terminal charge in Ex. 5, for a distance of 300 miles, appears to be 11 cents, as assumed by Mr. O'Brien in his cross-examination.

The MASTER: Ex. 5 to the Bill?

Mr. HOW: Ex. 5 to the Bill of Complaint.

Q. Is that the regular terminal charge of your Company for a distance of 300 miles from eastern terminals in Minnesota?

A. That rate, as shown in that exhibit, for 300 miles, is the rate to Minneapolis from a point that distance on the line running towards Grand Forks. The rates at Grand Forks are the same as at Fargo and are based on the shorter distance of the Great Northern Railway, through Cass Lake and Crookston to Grand Forks. The Crookston rate on grain to Duluth or St. Paul is 11 cents per hundred pounds; necessarily, the Northern Pacific rate for that 300-mile distance, on that branch-line, must be the same. That rate is not the present actual rate of the Northern Pacific Railway for a haul 300 miles west of Minneapolis on its direct line; the rate for that distance, as shown in Exhibit 44—Baird, is 13 cents per hundred pounds, and the difference in the rate, therefore, between the 200-mile point and the 300-mile point is 3 cents per 100 pounds instead of one cent per 100 pounds, as shown in the other exhibit.

Q. The one cent per hundred pounds, instead of three, being a modification caused by competitive conditions and shorter mileage of your competitor?

A. Yes, sir.

Q. I asked you, perhaps two days ago, to produce a tariff-sheet showing rates from Minnesota points to North Dakota points in existence prior to the taking effect of the Commission's order of September 6, 1906, and reductions since made by your Company on account of the effect of the Commission's tariffs. Have you prepared such a tariff-sheet?

A. Yes, sir.

Q. You produce it and it is marked "Complainant's Ex. 47—Baird." This exhibit has a tariff, for instance, between group one, of the Minnesota points, composed of St. Paul, Minneapolis and Minnesota Transfer, and Stevenson, North Dakota, showing, in red figures, for first class 62, and in black figures, for first class 52; what do those figures signify?

A. The red figures are the scale of rates that were in effect between points in all of the three groups (1, 2 and 3), and Stevenson, North Dakota, prior to the order of the Minnesota Railway Commission.

Q. And what are the black figures?

A. The black figures are the present rates from those different group points.

Q. And when were those present rates established?

A. On the same day that the rates to Minnesota points, East Grand Forks, Moorhead, etc., were published.

Q. And that illustrates, in general, the way in which the entire table is made up?

A. Yes, sir.

Q. Were all these changes made simultaneously with the establishing of the rates prescribed by the Commission?

A. No, sir, they were not.

Q. What changes have since been made?

A. The changes east of Bismarck, North Dakota, inclusive, were made at the time of the Railroad Commission's order. Subsequently, on account of the effect that those rates, by using combination of locals on Fargo, had on the rates to the territory west of Bismarck, we found it necessary to make the changes as indicated by the black-ink figures as compared with the red.

The MASTER: On what page?

WITNESS: On page 21 of the exhibit.

Q. Do those changes, in your judgment, represent all the

changes that it will be necessary for your Company to make in North Dakota rates if the Commission's schedule of rates remains in effect in this state?

A. No, sir; I believe it will be necessary to make further changes, as these changes represent through rates, which are based on the combination of two locals on Fargo; and it will probably be impossible for us to continue a through basis of rates from our terminals on that basis.

The MASTER: What influences will compel a change?

WITNESS: The fact that the adjustment is relatively unfair as between different distributing centers, and also the fact that the North Dakota rates are relatively much greater than the rates in Minnesota; the natural demand of the people of North Dakota for a basis of rates which they have enjoyed heretofore, that is, they have had a basis of rates that was fair as compared with the Minnesota rates. Now, the Minnesota rates have been reduced, and the North Dakota rates have only been reduced to an amount necessary to protect the Northern Pacific Railway against shipments for that territory coming in at such junction points as Fargo and Casselton and other junction points in North Dakota with other roads.

Q. Will you explain why the citizens of North Dakota are at a disadvantage in having the equality of rates between North Dakota and Minnesota disturbed by the lowering of the Minnesota rates and the maintaining of the North Dakota rates on a higher schedule, with regard, especially, to its effect on the distributing towns of North Dakota?

A. The basis of rates, as indicated in that schedule, gives an advantage in some cases and a disadvantage in others, as between the various distributing towns.

Q. A greater advantage and disadvantage than existed under your old schedule?

A. Under the old schedule, yes, sir.

Q. A change in relation?

A. A change in the relation of the rates.

Q. In favor of Minnesota as against North Dakota?

A. Well, in some cases it worked that way, and in other cases it was in favor of North Dakota against Minnesota.

Q. Well, explain fully what you mean by that.

A. In some cases the combination of the rates into Fargo, for instance, and out, would give the North Dakota merchant a great advantage in the distributing of goods in that territory, and that made it necessary to reduce the rates from St. Paul. In other cases it gave the St. Paul merchant an advantage in that territory. That will probably require an adjustment of the rates from Fargo and the other distributing points.

Q. In order to preserve the competitive conditions that existed under the old schedule?

A. Under the old schedule of rates.

Q. And how long had that condition existed?

A. That had existed for many years.

Q. And what had been the effect upon the various North Dakota communities?

A. The North Dakota communities had built up quite a large distributing trade in that section, on such commodities as agricultural implements and those handled by wholesale grocers and wholesale hardware men, etc.

Q. Now, I observe from this Ex. 47—Baird, that there has not been a universal reduction to all points in all classes; the reduction to some points has been universal in all classes; the reduction to other points, and more particularly west of Bismarck, has not been universal. Why has not such reduction been made universally?

A. The Commissioners' scale being on a low basis, lower than we had ever applied before, it was thought that the railroads could not any longer continue to shrink their revenue in order to equalize the markets of St. Paul, Minneapolis and Duluth. In the former tariff, the rates from those points to

stations in Minnesota (that is, those terminal points to stations in Minnesota) were on the same basis; that is, the same 11 cents per one hundred pounds, from each of the terminals; but the new schedule being on a very low basis, the railways did not feel as though they could make any voluntary reductions beyond the Commissioners' schedule in order to equalize these conditions, and they therefore put that burden of equalization on to the shippers themselves. Duluth being a greater distance from St. Paul or Minneapolis, the rates from Duluth were figured out in Minnesota on the basis of the Commissioners' schedule for the actual distance. When we got beyond the Minnesota state line, we got away from that condition just as soon as possible.

Q. This answer all refers to an explanation of the reason why formerly, as indicated by the red figures, the rates to the various North Dakota points from groups 1, 2 and 3, respectively, were the same and now they are different?

A. Yes, sir.

Q. Well, please go on with it. I should have asked that question next; that is not quite the question I asked. Perhaps that concludes your answer upon that point.

A. Except that after we get to distances which are about 25 or 30 miles, in some cases, beyond the North Dakota state line, these rates are brought together, as we adjusted them on a higher basis in North Dakota than in Minnesota, and therefore continued the old practice of making the same rates from these points in the three groups.

Q. The purport of your answer is (rather, the import of it is) that formerly, under your own schedule, Duluth, St. Paul, Minneapolis and the Transfer were treated as competitive distributing markets and therefore as common points for the purpose of distributing tariffs?

A. Yes, sir, distributing merchandise.

Q. Distributing merchandise, yes. Now, under the Com-

mission's order, you have abandoned that idea and applied strictly mileage from Duluth, which is somewhat larger than that from—

A. We have, in the state of Minnesota, and have just as soon as we could after getting away from the Minnesota state line.

Q. You have treated them as common points just as soon as you could?

A. Yes, sir, after getting away from the Minnesota state line.

Q. That answer is to a question that I should have asked next, but what I referred to in my former question, and desire you to explain, is this: On the last page of the exhibit it is shown that the rates, for instance, from Lyons, the third station west of Bismarck, to Beech (which is the most westerly station in North Dakota, I take it), for the first class have not been changed, and so in the second class and third class; some in the fourth class have not; only a few in class "A," some have been changed; and some in each of the other classes have not been changed. And I ask you why the change in all the North Dakota rates from the various group points in Minnesota have not been changed.

A. They were not changed, in the first place because we did not feel as though the rates in North Dakota should be reduced at all; and these rates were not changed at the same time that the change was made east of Bismarck, for the reason that it was not observed at that time that the actual combination of locals to and from Fargo would reduce the through rates. These red-ink figures (that is, the changed rates) are based on the North Dakota distance tariff added to the rates of the Minnesota Commission to Moorhead, and applied to Fargo. The distance tariff in North Dakota is about 25 per cent higher than the distance tariff in Minnesota. If we had applied, in North Dakota, the same distance tariff that we applied in Minnesota, all of the rates in North Dakota would have been

correspondingly reduced; that is, a great portion of the rates in North Dakota would have been correspondingly reduced, and that would of necessity have reduced the rates on all of these classes. Now, the only reason why this reduction has not yet extended into Montana, is the fact that the distance tariff rates in Montana are on a higher basis than the North Dakota rates; otherwise, this reduction would have extended right into and probably through the state of Montana.

Q. You stated in your answer that the distance tariffs in North Dakota were 25 per cent higher than in Minnesota?

A. Yes, sir.

Q. And in Montana 25 per cent higher than in North Dakota?

A. Well, they are considerably higher. That would be shown in one of these exhibits, but I have not figured it out on a percentage basis. I did figure out approximately the percentage that the North Dakota rates were higher than the Minnesota Commissioners' distance tariffs in Minnesota.

Q. And when you say that the North Dakota rates are 25 per cent higher than the Minnesota rates, referring to distance tariff, you are comparing the Commissioners' distance tariff with the North Dakota rates?

A. The Commissioners' distance tariff, which is the present distance tariff rates of the Northern Pacific—

Q. Exactly.

A. —in Minnesota.

Q. Have you prepared a statement showing a comparison of the combination carload rate from St. Paul to Fargo and the less than carload rate from Fargo to points of destination in the state of North Dakota with the less than carload rate from St. Paul to points of destination in North Dakota, using some fair specimen points?

A. Yes, sir, I have.

Q. This is produced and marked Complainant's Ex. 48—

Baird. I show this Exhibit to you, and ask you to explain it.

A. This statement shows the combination of the carload rate from St. Paul to Fargo, North Dakota, on the commodities which are enumerated on the head of the various columns, and the less than carload rate from Fargo to the destinations named; also the less than carload rate from St. Paul on the same commodities to the same destination. The combination rates (that is, the carload rate to Fargo and the less than carload rate to destination) are designated as "A," and the straight less than carload rate from St. Paul as "B." This shows the advantage which a merchant at Fargo has at the present time over his competitor at St. Paul and Minneapolis or Duluth in the distribution of this class of merchandise into the towns west of Bismarck, North Dakota.

Q. And, I understand, from your previous testimony, that that advantage is a new advantage, arising since the promulgation and taking effect of the Commission's rates?

A. It is an advantage which did not exist to the same extent as under the old basis of rates. It is not always possible to adjust the rates so that they will always be on an equality as between the different distributing centers, but they should be on a substantial equality. Of course, the distance from the distributing center has something to do with it. There is always a natural advantage at a point which is a short distance from a distributing center.

Mr. How: I offer these two exhibits, each of them.

Q. There was some testimony in your cross-examination yesterday, or day before, with regard to the assumption that a 400-mile haul was the most economical haul that could be made. What, if anything, in your judgment, is the difference in cost between the actual haulage, setting apart and leaving out of consideration all terminal charges, expenses of division points, etc., between the first five miles of a thousand-mile haul, for instance, and the last five miles?

A. As to actual hauling charge?

Q. Yes, actual hauling expense.

A. They would be approximately the same.

Q. Other conditions of operation being equal?

A. Other conditions of operation being equal.

Q. Do you know what is allowed commonly for the time of a car at each terminal?

A. I should say about three days would be a fair allowance for the time at each terminal.

The MASTER: What do you mean by that?

WITNESS: The time that is required to load the car and switch it and place it in the train; at the other destination, to place the car and unload it and make it available for further use.

Q. Sweep it out—

The MASTER: That is what I supposed, but I wanted to be sure.

Q. So that, assuming that it takes one day to haul a car 100 miles, it takes seven days' time of that car for the transportation of a carload lot for 100 miles?

A. Yes, sir.

Q. Now, assuming that it takes one day to haul a hundred miles, it is easy to calculate how many days' time of that car it takes for a haul of a thousand miles. Will you make the calculation?

A. That would be ten days.

Q. Plus the terminal time?

A. Plus the six days consumed at the two terminals; or, sixteen days.

Q. That is to say, it takes the time of a car seven days to go 100 miles and sixteen days to go 1,000 miles?

A. Yes, sir.

Q. And how much time of the car would it take for 2,000 miles?

A. On the basis of 100 miles a day, twenty days for the movement of the car, and six days at the terminals, or a total of twenty-six days. So that a carload of freight shipped across the country from here to Puget Sound, moving at the rate of 100 miles per day, would, on that assumption, be in the service about twenty-six days.

Q. Does that, to your mind, present a fair basis for argument that a 400-mile haul is the most economical haul that a railroad may have?

A. That presents another element which did not occur to me yesterday in making that answer, and it is therefore fair to assume that the Railway Company would not get the same use of its equipment in traffic which is hauling between points four or five hundred miles that it would between points which are 2,000 miles apart.

Q. Inasmuch as the same terminal expense has got to be made, whatever the haul?

A. The same terminal time has got to be figured, whether the haul is a short one or a long one.

Q. And in the case of a short haul, it has fewer miles to distribute that over than in the case of a long haul?

A. Yes, sir.

RE-CROSS-EXAMINATION.

By Mr. O'BRIEN:

Q. I understand you to say, Mr. Baird, that the rate to Butte upon merchandise of the first class, now in force upon the Northern Pacific, is $2.25 per hundred pounds?

A. Yes, sir.

Q. I call your attention to Ex. 45—Baird. The line marked "A" in that exhibit represents what?

A. That represents the distance tariff rates which were in effect in Montana, Idaho and Washington.

Q. Now, what, exactly, do you mean by distance tariff?

A. The distance tariff is what we might call the foundation

tariff. It is the original tariff, the tariff from which other rates are computed, and represents the maximum rate in effect in the territory in which the distance tariff applies.

Q. Well, does the line marked "A" represent any particular class of freight?

A. It represents an average of all the ten classes.

Q. It represents an average rate?

A. An average of all the ten classes, yes, sir.

Q. And line "B" represents—?

A. Line "B" represents the tariffs from eastern terminals to Minnesota and Dakota in effect prior to November 15, 1906, and also extended beyond Dakota for distances up to 1,500 miles; in fact, it shows the actual basis of merchandise rates, taking the average rate of the ten classes, for each of the distances computed on 50 miles.

Mr. HOW: November 15, 1906, being the date of the taking effect of the Commission's order?

WITNESS: Yes, sir.

Q. In the correction which you made this morning of the comparison between the Commissioners' rate extended to Butte and the rate in effect at Butte, you first deducted what you claimed to be the terminal charge included?

A. First deducted what is the terminal charge in the schedule of the Minnesota Railway Commission.

Q. As you interpret it?

A. Yes, sir.

Q. And then made a computation of the rate per ton per mile allowed under that schedule for 500 miles?

A. Yes, sir.

Q. You did not take the rate as an entirety in arriving at what was allowed per ton per mile?

A. Not in that computation.

Q. Had you done so, what would have been the rate?

A. $1.68.

Q. Whereas, by the method adopted by you, it was—?

A. $1.54.

Q. Butte is on the line of your road which runs through Moorhead and Fargo, is it not?

A. Yes, sir.

Q. What is the distance from St. Paul to Moorhead?

A. 248 miles, approximately.

Q. And what is the distance from Duluth to Moorhead?

A. It would be eight miles farther.

Q. 256 miles.

A. 248 miles I believe from Duluth.

Q. I thought you said 243 to Moorhead.

A. I can give you the exact figures; I have them here somewhere. St. Paul to Moorhead is 248 miles, and Duluth to Moorhead is 247 miles; therefore, Duluth is one mile less than St. Paul.

By Mr. How:

Q. Are you sure that that isn't an error? I am pretty sure that is an error.

A. No, it shows up that way on all of these distances, the same differences.

Q. It doesn't show it on your tariffs that way, does it?

A. You see, in figuring the tariffs, we figure the Minneapolis distance instead of the St. Paul distance. Duluth is about nine miles farther from these points than Minneapolis.

Q. Treating St. Paul and Minneapolis and the Transfer as a common point on Minneapolis mileage?

A. Yes, sir.

By Mr. O'BRIEN:

Q. What is the rate allowed, under the Commission's order, for merchandise of the first class from the Twin Cities to Moorhead? that would be the rate allowed for 250 miles.

A. Not from the Twin Cities, because we would have to

take the Minneapolis distance; we would have to base it on the short distance.

Q. Well, take it from Duluth, then; take the 250-mile rate.

A. 250 miles, the rate from Duluth is 55.12 cents; that is, that is the first-class rate for 250 miles under the Commissioners' schedule.

Q. And how much would that be per ton per mile?

A. I figure it 6.887 cents.

Q. Mr. Baird, 55.12 you said?

A. I took it 55.1.

Q. That is how much a ton?

The MASTER: That is per hundred.

Mr. O'BRIEN: That is per hundred.

Q. That is how much a ton? $11.02 a ton, isn't it?

A. Yes, sir. Wait—no. Well, you figure a different way from what I do.

Q. Maybe I am figuring wrong. Let us see. Try it again. I want to get how much that is a ton.

A. $11.02 a ton, then divide it by 250, you are right.

Q. Practically four and a half cents per ton per mile?

A. Four and a half cents per ton per mile.

Q. Now, apply that rate to 1,130 miles. That is the distance to Butte, is it?

A. Yes.

Q. $50.85?

A. $50.85, yes.

Q. That is $50.85 per ton?

A. Yes.

Q. Which is how much per ton per mile?

A. No, that isn't—the four and one-half cents is the rate per ton per mile.

Q. Now give us the rate per hundred pounds.

A. $50.85 would, therefore, be the rate per ton to Butte.

Q. Yes. Now give us the rate per hundred pounds.

A. I divide that by 20; that would make $2.54 per 100 pounds.

Q. As against $2.25, your present rate?

A. Yes.

Q. Now, what is the distance from the Twin Cities or Duluth to East Grand Forks?

A. 318 miles.

Q. That is the longest haul there is upon the Northern Pacific in the state of Minnesota?

A. Yes, sir.

Q. Now, will you make the same computation with reference to that, which is the longest haul that the Northern Pacific can have in the state. What is the rate to East Grand Forks?

A. 62 cents.

Q. Even, is it?

A. Well, it is 61.98.

Q. It is practically four cents per ton per mile, is it not?

A. Practically, yes, sir; $45.20. per ton, or $2.26 per 100 pounds.

Q. What is the present rate from St. Paul to Bismarck upon merchandise of the first class, as you have now adjusted it, under the circumstances as you have explained them?

A. 98 cents.

Q. Is it not one dollar?

A. I think it was a dollar, but I think it was reduced to 98 cents.

Q. Bismarck is also situated upon the line of your road passing through Moorhead and being the same line upon which Butte is situated?

A. Yes, sir.

Q. And we have already ascertained that, by the method of computation which I have made, that is, taking the rate allowed you for a haul to Moorhead, the rate per ton per mile on that

haul is four and one-half cents?

A. That is correct.

Q. The distance to Bismarck from St. Paul is 433 miles?

A. 445 according to the time-card from St. Paul.

Q. You have figured these distances from Minneapolis?

A. Yes.

Q. That makes it 433?

A. 433, according to this statement here.

Q. Well, between 433 and 445 miles. Now, take the distance from Minneapolis, at four and one-half cents per ton per mile, what would be the cost of a ton of freight of the first class transported to Bismarck?

A. $19.58.

Q. And that is how much per hundred pounds?

A. Substantially 98 cents per hundred pounds.

Q. Therefore, in extending your rates to Bismarck, as you claim you were compelled to do, and as you are now maintaining those rates in connection and in conjunction with the rates established by the order of the Commission, you have pursued the system and plan which I have now asked you to pursue rather than the plan or system or computation contained in any one of your tables?

A. No, I wouldn't say that, because we didn't figure these rates out on any such plan or on any such computations.

Q. You made an awful good guess, then.

A. You see we allowed the Bismarck rate to remain substantially as it was; we didn't change these other rates west of Bismarck on that basis. And even if we had done that, that would have applied the same rate of progression for 200 miles west of Fargo that we make for the first 250 miles east of Fargo. That is manifestly an improper method of compiling a tariff.

Q. You mean the method that you adopted?

A. If we had adopted that method it would have been an

improper one.

Q. Well, you did that, didn't you, that was the conclusion arrived at?

A. It worked out that way but we did not figure it on that basis.

Q. The test which we have made of it this morning has resulted in arriving at just that result?

A. Not at Butte.

Q. You haven't changed your rate to Butte?

A. No.

Q. But where you have changed your rate to Bismarck, that has been the result?

A. It works out on that basis at that station, but I don't know how it would work out at any other station.

Q. Well, you will have to take another adjournment and you and Mr. How go to work on that.

The MASTER: Your basis is spreading the terminal over the whole distance, and theirs is taking it out in the first instance?

Mr. O'BRIEN: No, what I claim from what Mr. Baird has testified now, is that in making the practical application of these rates, they have pursued the system of taking the actual rate, the actual return, reducing it to ton mileage, and then applying that to the entire distance.

The MASTER: That is what I meant.

Mr. O'BRIEN: Yes, and that is what has been done in North Dakota.

The MASTER: That is your method, as distinguished from their method, as explained in the first instance?

Mr. O'BRIEN: They have no method, may it please the Court, because we claim that the laws of the state of Minnesota have no extra-territorial effect,—

The MASTER: That was the method under your examination

Mr. O'BRIEN: —but that was a method that I suggested, if they desired to adjust these rates.

The MASTER: I don't mean that you should be considered as fathering it at all, but that was the method you suggested.

Q. I now call your attention to Ex. 48, and call your attention particularly to the first item appearing in that exhibit, "Beans, dry, in sacks. Mandan, A-60.7 cents; B-67 cents."

A. Yes, sir.

Q. As I understand it "A" is the total freight from St. Paul to Mandan at carload rates to Fargo and less than carload rates from Fargo to Mandan?

A. Yes, sir.

Q. What was the carload rate to Fargo?

A. On which this computation is made?

Q. Yes.

A. The carload rate is the fifth class rate, I believe. The rate in effect prior to June 1, 1907, which is the date of the supplemental order of the Commission covering the commodity rates, was 27 cents per hundred pounds.

Q. What was the local rate in less than carload lots from Fargo to Mandan,—40.7 cents?

A. No. You asked me first the rate in effect.

Q. No, I am speaking of the rate—

A. On which this computation is based?

Q. Yes. This computation is based for the purpose of showing the difference in rates now and immediately following—

A. The present rate on a carload of beans from St. Paul to Fargo is 18.7 cents.

Q. That is under the Commission's order?

A. Yes, sir.

Q. And before you altered your local rate in Dakota, what was the rate in less than carload lots from Fargo to Mandan?

A. Why, there has been no change; it would be the difference between this 18.7 and the 60.7, or 42 cents.

Q. There has been no change made in that?

A. No sir, not from Fargo to Mandan.

Q. So that the sum of those two locals is still 60.7 cents?

A. That is the sum of the locals today, yes, sir.

Q. Now, your rate from St. Paul to Mandan was 67 cents?

A. The rate from St. Paul was 69 cents, prior to the reduction made in the Mandan rate.

Q. And what is it now?

A. It is now 67.

Q. Then the combination rates are still less than the through rate?

A. At the present time the combination is 6.7 cents less than the through rate.

Q. Well, I understood you, when you presented this tabulation, to claim it was a tabulation showing the necessity of making certain reductions which you had made beyond Bismarck.

A. That is one of the conditions which seems to us to require a further reduction in the rates beyond Bismarck.

Q. Oh, but this doesn't indicate any reductions which have been made?

A. Well, it indicates—yes—the reduction which has already been made of two cents in the third-class rate to Mandan from St. Paul.

Q. Now, a merchant doing business in Fargo would be able, by purchasing commodities described in Ex. 48 in carload lots and receiving them in carload lots, to obtain a rate of 18 cents from St. Paul to Fargo?

A. Yes, 18.7 cents.

Q. The cost to the Company of transporting those commodities in carload lots would be much less than in transporting them in broken lots that same distance?

A. That is correct, yes, sir.

Q. He then could distribute those commodities throughout North Dakota at the local rate in less than carload lots, as shown in this schedule?

A. Yes, to the points shown in this schedule, on the basis there indicated.

Q. And by so doing, the cost of the service to the Railroad Company would be less, would it not?

A. Well, I wouldn't be willing to say that it was less, because in the handling of traffic in that way there are four terminal expenses instead of two; that is, a terminal expense at the originating point, St. Paul, on a carload of beans going to Fargo; there is a terminal expense at Fargo—

Q. Well, if we assume that the rates in carload lots from St. Paul to Moorhead and Fargo is a just rate, in itself, and if we assume that the local rate which you have established from Fargo to interior points in Dakota is a just rate, in itself, the Company would be receiving just and full rates for each service, would it not?

A. If each of those rates was a just rate and made with respect to the conditions which existed in that territory, the Company then would be receiving the full rates for its service.

Q. And as a result of that condition, the merchant at Fargo would be able to distribute the commodities to the local merchants at 7 cents per hundred pounds less than your through rate would be?

A. That would be the case.

Q. And the local merchant would be compelled to pay 7 cents per hundred pounds less for the commodities?

A. Yes, sir.

Q. But the merchant in St. Paul would be put at a disadvantage as compared with the merchant in Fargo if you maintained your through rates from St. Paul to local towns in Dakota?

A. His merchandise would, in that case, be assessed approximately 7 cents per hundred pounds—

Q. 7 cents a hundred pounds more?

A. Yes.

Q. So that you claim you were under the necessity of adjusting that difference?

A. We are under the necessity for the reason that we believe that any basis of rates which gives Fargo an advantage of 7 cents per hundred pounds in the distribution of merchandise 200 miles west of Fargo is an unequal adjustment of rates.

Q. Entirely without reference to the cost of the service or the justness of those rates in and of themselves?

A. No, the rates may be just rates, and still be in favor of one community as against another.

Q. Then, if you impose a rate that is higher than the just rate, is not the Railway Company assuming to dictate as to what community has an advantage or what community shall pay a just rate?

A. Well, in this case we are not basing these rates on any such assumption. On the other hand, we have endeavored to show that the rates at Bismarck and Fargo are relatively higher.

Q. That is not answering the question, Mr. Baird.

A. Well, I want to answer the question.

Q. Well, go ahead.

A. Well now, will you please state the question again?

Q. I say that when you undertake to adjust your rates with relation to the competition between merchants located in different parts of the country and without regard to the cost of the service or the justness or the unjustness of any particular rate, you are assuming to dictate upon what terms merchants shall do business?

A. Well, we are not undertaking to adjust the rates as between communities without regard to what, in our judgment, is a fair basis of rates.

Q. Yes, but as a fair basis of rates you don't take into consideration as the sole question the justness of the rate in and of itself, do you?

A. That is always one of the considerations,—always.

Q. It is not, however, the sole consideration?

A. No, we cannot base our rates on the sole consideration of the justness of the rate itself, because there are so many influences which control the making of a rate.

Q. Now, assume that you are a merchant at Mandan and that I am a merchant at Fargo; that the rate 18.7 cents from St. Paul to Fargo for "Beans, dry, in sacks," in carload lots, is a fair and just rate to the carrier; and that the rate of 42 cents from Fargo to Mandan for "Beans, dry, in sacks," in less than carload lots, is a fair and just rate to the carrier; by what authority do you claim that the carrier has a right to exercise its discretion and compel you to pay 7 cents per hundred more for those beans in order that a merchant in St. Paul may compete with me, a merchant in Fargo?

A. Your question assumes facts which I am not willing to admit.

Q. You are only asked to answer upon the assumption of those facts. I ask you to assume those facts and insist that you do.

The previous question was read.

A. Well, we don't assume to exercise that right in any of these cases, because our efforts are not to place the merchant at Mandan at a disadvantage, but to give him the advantage of competing markets. We have no right to make our rates on a basis that will confine the purchases of the merchant at Mandan entirely to Fargo.

Q. Is it not true that you must either base your rates upon the cost of the service and a fair return upon the property involved in the service, or else upon your discretion as to whom you will equalize and whom you will not?

A. Well, the whole basis of rates takes into consideration the equalization from competing markets. That is always one of the considerations in making rates. We can't avoid it.

Q. And in your criticism of the rates established by the leg-

islature of Minnesota, or by the Commission of Minnesota, you take into consideration the fact that the judgment of the public officers varies from your judgment with regard to the equalization of rates between different people, different sections?

Mr. How: That is objected to as not based upon fact; the State of Minnesota has not yet assumed to regulate the local rates in North Dakota. The State of Minnesota has expressed no judgment with regard to the fairness of the local rates in North Dakota—not yet. I think that question assumes that they have.

Mr. O'BRIEN: Well, I don't care about that.

The MASTER: Do you withdraw it?

Mr. O'BRIEN: Yes.

Recess until 2 P. M.

AFTERNOON SESSION.

Q. Again calling your attention to Exhibit 48, Mr. Baird, will you please give me the rate from St. Paul to Fargo on beans, dry, in sacks, in carload lots?

A. The present rate?

Q. Yes.

A. 18.7 cents

Q. What is the rate from Fargo to Mandan in carload lots?

A. Well. I would have to have a classification here in order to figure that out. (Classification sent for.)

Q. What is the distance from the Twin Cities to points on Puget Sound?

A. A little over 1,900 miles.

Q. And what is the rate upon merchandise of the first class from the Twin Cities to those points?

A. $3 per hundred pounds.

Q. That is exactly three cents per ton per mile, is it not?

A. That would be $60 a ton. If it were 2,000 miles it would be exactly three cents per ton per mile.

Q. It is practically three cents per ton per mile?

A. Yes, sir.

Q. If the rate provided by the Commission from here to Moorhead were in force, it would be $90 per ton, would it not?

A. You mean figuring it on proportionally the same distance?

Q. Yes.

A. The same rate for each distance?

Q. Yes.

A. Well, the distance is about eight times what it is to Moorhead.

Q. Well, the rate is 4½ cents per ton per mile from here to Moorhead.

A. Well, let me figure it. If it were based on mileage it would be over $5 per one hundred pounds; that is, if it was proportional to the rate to Moorhead, which would be over $100 per ton.

Mr. How: What? $60 per ton, you say? Now you say $100.

WITNESS: No, I didn't say $60; I said that the rate per hundred pounds for first class, based on the Commission's rate to Moorhead and extended in accordance with the distance (that is, making the same rate per mile through as is made to Moorhead) would make the rate over $5 per one hundred pounds.

Q. Well, Mr. Baird, I think your calculation is slightly incorrect. We ascertained, this morning, that the rate per ton per mile from here to Moorhead was 4½ cents. Now, assuming that the distance to Puget Sound points is two thousand miles, that would give a rate of $90 per ton, would it not?

A. Yes, sir, approximately.

Q. Instead of a rate of $60 per ton, which is now maintained by you?

A. Yes, sir.

Q. And in hauling merchandise from the Twin Cities to points upon Puget Sound, you cross three mountain ranges?

A. Yes, sir.

Q. Where the cost of the transportation is vastly greater than it is in Minnesota?

A. It is greater; I don't know that I would want to say vastly greater.

Q. Do you know the number of loaded cars which can be pulled by one locomotive from the Red river to either the Twin Cities or Duluth?

A. Well, that would depend, of course, on the lading of the cars and the rating of the engines; but just what is the average number of loaded cars handled in a train I am not able to state.

Q. Is it not true that one of the large modern locomotives owned by the Northern Pacific Railway Company is capable of pulling fifty freight cars loaded to maximum capacity with wheat, from the Red river to either Duluth or the Twin Cities?

A. Well, of my own knowledge, I am not able to state that that is a fact.

Q. Do you know how many freight cars constitute an average train, crossing one of the three mountain ranges I have mentioned?

A. No, I do not.

Q. Are you able to say whether or not each freight train has at least two locomotives?

A. I think that is correct.

Q. In crossing the mountains?

A. In crossing those mountain ranges.

Q. And is it not true that the maximum freight train does not consist of more than twenty loaded cars?

A. No, I don't believe that is correct, although I couldn't say. I couldn't give you any idea of it, because I don't know how those trains are operated, whether with one, two or three engines, but I think there is not less than two on any of the trains, and sometimes I have known them to carry trains over

the mountains with three engines.

Q. Now, when you spoke, this morning, of the saving in car service between a long and a short haul, did you not ignore the fact that at each division terminal all trains are broken up, cars transferred from one train to another?

A. No, that is not a fact. In making up of through trains with through merchandise for Montana and the Pacific coast, it has been the practice, heretofore, to take the cars from Minneapolis, Minnesota Transfer, St. Paul, Duluth and Superior, and consolidate them at Staples, make a through train at Staples, which (unless some of the cars were disabled) would go through to the far western points intact.

Q. You have upon the road, then, through trains from Staples to Tacoma or Seattle?

A. Yes, sir.

Q. And those trains are not changed in any way at the divisional points?

A. Not unless there should be some of the cars disabled, or some other incident that would require them to be taken out.

Q. Do those trains constitute a large proportion of the traffic?

A. They constitute a large proportion of the traffic destined to points in that section.

Q. From the Twin Cities?

A. Yes, sir.

Q. Is there any lumber shipped from the Twin Cities or Duluth to East Grand Forks or Moorhead?

A. Practically none.

Q. Where are those places supplied from?

A. There is a mill at Little Falls, one at Frazee, and I think there is a small mill at East Grand Forks. There was, but I don't know whether it is operating now or not. There is a mill at Crookston.

Q. What is the longest haul of lumber, wholly within the

state, upon the Northern Pacific Railway?

A. Wholly on the Northern Pacific?

Q. Wholly on the Northern Pacific, and wholly within the state?

A. Probably from Little Falls to East Grand Forks. That is about 215 miles.

Q. What is the rate allowed by Chapter 232 for hauling lumber in carload lots that distance?

A. For 220 miles it would be 11.2 cents.

Q. And how much per ton?

A. $2.24 a ton.

Q. And how much is that per ton mile?

A. A little over one cent a ton a mile.

Q. The rate upon lumber from the state of Washington to the Twin Cities as now maintained by your road is 4½ mills per ton per mile?

A. A little more than that, because the distance would be a little less than two thousand miles, but substantially 4½ mills per ton per mile.

Q. And that lumber in making that journey crosses the mountain ranges that I have spoken of?

A. Yes, sir.

Q. What is practically the longest haul on the Northern Pacific Railway in Minnesota upon shipments of cattle?

A. 320 miles, approximately.

Q. And where is that from?

A. That would be from East Grand Forks to St. Paul.

Q. And what is the rate allowed for that haul?

A. You want the legislative rates?

Q. Yes.

A. 19 cents per hundred pounds.

Q. What is the rate upon cattle from the Minnesota Transfer to Chicago,—the local rate?

A. I couldn't give you that rate.

Q. What is the rate now maintained by the Northern Pacific upon cattle from East Grand Forks to Chicago?

A. I think we have no through rate lower than the combined locals to St. Paul and from St. Paul to Chicago. That is my recollection.

Q. In asking the questions which I have, Mr. Baird, with reference to the particular tables presented by you, you have observed that I have generally based my questions upon the first item appearing in the table.

A. Yes, sir. That is, by the first item how do you mean? I don't believe I quite understand you.

Q. In referring to your exhibits, for instance to Exhibit 48, I confine my questions to the first item appearing in the table.

A. Yes, sir.

Q. Now, the same conditions, relatively, are true as to all of the other items, are they not?

A. Well, the relative conditions in what way? I don't believe I quite understand.

Q. Well, what I mean is that computations with reference to the other items, based upon the same theory that I have used in asking you to make computations as to the first item, would produce, relatively, the same results.

A. Well, in the case of the beans we have not gone very far for me to determine on just what basis you are making the inquiries.

Q. You mean these last questions that I asked you?

A. Yes, sir.

Q. Well, I was not referring to those, I was referring to the statements made with reference to the effect of the rates upon the Fargo merchants or the St. Paul merchants, so far as Exhibit 48 was concerned. In asking you questions with reference to the rates upon merchandise of the first class, I was endeavoring to ascertain what would be the result of extending the Minnesota rates upon the theory which I suggested, and

which I understand was adopted by you in extending the rate to Bismarck—.

A. Yes, sir.

Q. Now, what I want to say is that that same condition applies to all of the items and to all of the tables.

A. To all of the classes, you mean, lower than the first class?

Q. Yes.

A. Well, not as to the tables, the exhibits, because in making the extensions below the lower classes, for instance, at Bismarck, on the extended scale, to compare with the existing rates, we have used the same percentage in figuring those lower classes as was used by the Commission.

Q. You have introduced here tables which have been marked from Exhibit 35—Baird to Exhibit 48—Baird, inclusive. I ask you if each of those tables has been prepared upon the same theory which you have described in answering my questions as to the particular items of those tables.

A. If I understand your question correctly, they have been.

Q. Therefore, when we ascertain the difference in result as to one item upon those tables, arrived at by pursuing a different method of computation, we have completely analyzed that table?

A. I wouldn't say that as to all of the tables.

Q. What tables are not within that class?

A. Why, No. 48, for instance, is not within that class.

Q. Is there any other?

A. No, sir, not that I remember.

Q. Then, with the exception of No. 48, it would be a mere repetition to go over each class and each item of freight found within those tables?

A. Yes, sir.

Q. You understand that I am simply endeavoring to avoid occupying that amount of time, Mr. Baird.

A. Yes.

Q. And if you claim that a different relative result would be arrived at by taking any other class or any other item of freight, I desire that you should call my attention to it.

A. With the exception of Exhibit 48, no different result would be obtained by making an analysis of any other class than the first class, or any given class that is shown in those tables.

Q. In what respect does Exhibit 48 differ from the other tables?

A. Exhibit 48 shows the difference between the present less than carload rates on the commodities named, from St. Paul and other eastern terminals to the stations named which are in North Dakota west of Bismarck, as compared with the combination of the carload rates from St. Paul to Fargo plus the carload rate to destination. Now, that is all that that shows.

Q. That recalls us to Exhibit 48. You now have the information to answer my questions?

A. Yes, sir.

Q. The rate in carload lots for beans, dry, in sacks, from Fargo to Mandan, was the last question I asked you.

A. 25 cents.

Q. Now, please give me the rate upon beans, dry in sacks, from St. Paul to Mandan.

A. The present carload rate from St. Paul to Mandan is 40 cents per one hundred pounds.

Q. What was the rate from St. Paul to Mandan of that commodity, in carload lots, prior to November 15, 1906?

A. 42 cents.

Q. Your rate, therefore, prior to November 15, 1906, for this commodity, in carload lots, from St. Paul to Mandan, was less than the sum of the Commission's rate from St. Paul to Fargo, and the rate from Fargo to Mandan as in force by your road?

A. That is, the Commissioner's carload rate to Moorhead,

extended to Fargo, 18.7 cents, plus the carload rate from Fargo to Mandan of 25 cents, makes a through rate of 43.7 cents, whereas the former fifth class rate was 42 cents per hundred pounds.

Q. Now, will you give me the rate from St. Paul to Fargo upon this commodity, beans, dry, in sacks, in less than carload lots?

A. You want now the present rate?

Q. Yes.

A. The present rate from St. Paul to Fargo on beans in sacks, in less than carload lots, is 36.1 cents.

Q. That is the Commission's rate?

A. Yes, sir.

Q. And the rate from Fargo to Mandan, in less than carload lots, is 42 cents?

A. 42 cents.

Q. The sum of those locals is what?

A. 78.1 cents per hundred pounds.

Q. And the through rate which you have established for the purpose of equalizing—

A. No, sir, not for the purpose of equalizing; we have not yet attempted to equalize.

Q. Well, I will leave that out. The through rate which you have established from St. Paul to Mandan is 67 cents?

A. 67 cents.

Q. So that, if the Fargo merchant purchases beans, dry, in sacks, at less than carload lots, and pays the local tariff upon them to Fargo, and ships them to Mandan in less than carload lots and pays the local rate in that state, the freight charges are 11.1 cents more per hundred pounds than they would be if they were shipped direct from St. Paul to Mandan in less than carload lots?

A. That is correct.

Q. What are beans worth a hundred pounds?

A. I haven't any idea.

Q. Don't you think that a proper comparison of those rates would be to compare the two locals in less than carload lots with the through rate for less than carload lots?

A. No, I don't believe that it would, because it would be an unnatural tariff that was made if every place that shipped any merchandise in any quantity had a basis of rates that they could ship in in less than carload lots and ship out at less than carloads and then always have the benefit of as low a rate as if it was shipped direct from the original point of origin.

Q. Well now, that is again an assumption upon the part of the railway companies to dictate the terms upon which men shall do business, isn't it?

A. Oh, not necessarily, no. If we made our rates, for instance, for every ten miles, if say there is a station at every ten miles, so that all of the rates into that station, added to all of the rates out of that station, made the same through rate as for a direct shipment, why you could never make a tariff on that basis.

Q. Minnesota enjoys some peculiar advantage, does it not, because of the location of lake Superior?

A. Yes, sir; it does, a decided advantage.

Q. And wherever you find a city located upon a waterway, that gives it a certain advantage in the matter of rates, does it not?

A. It does, especially on rates into that point, on commodities that can be handled by the water lines.

Q. Quite recently the question was presented to the Interstate Commerce Commission as to whether or not the railroads serving Omaha and Kansas City should be compelled to meet the rates to St. Paul made possible by the lake travel, was it not?

A. Yes, sir. That is, I have not the particulars of that case, only a general knowledge from reading of it in the newspapers.

Mr. How: Well, I am willing to go on as an expert in that case.

Q. And Mr. How, counsel for the Complainant, successfully maintained his position in that particular hearing, which was that the Commission had no right to deprive the merchants of Minnesota of the natural advantage they had because of the nearness of lake Superior.

A. That fact is usually recognized in the compilation of tariffs; it is recognized by the Northern Pacific.

Q. If the rate-making authorities, public authorities, have no right to deprive a community of a natural advantage which it may have, by what authority do you claim the right to undertake to limit or control the advantages which any community may have by your rates?

A. I don't believe that we undertake to limit or control the advantages which any community has by its natural location. Our rates are made on a relatively fair basis so as to give the towns on our line the benefit of competing markets, and if they have any natural advantages, I don't know of any case where we have tried to deprive them of such advantages.

Q. If, as a matter of fact and in truth, the Commission's rate upon beans, dry, in sacks, from St. Paul to Moorhead (being, as you have stated, 36.1 cents per hundred pounds) is a fair and just rate and allows the Northern Pacific Railway Company just and fair compensation, and if the rate which you have established in Dakota of 42 cents per hundred pounds for the same commodity from Fargo to Mandan is a fair and just rate, why should not the Fargo merchant have the right to use those rates?

A. If they are both fair and just, considering all of the conditions which surround them—the volume of traffic, the competitive conditions and the commercial conditions, the access to different markets—why he should have, if under all of those conditions that rate from Fargo is a fair one and the rate to

Fargo is a fair one.

Q. Mr Baird, I am going to ask you a broad question now. I understand that it is the duty of the Northern Pacific Railway Company to carry the commodities offered to it at fair and just rates, and that when they have secured rates which are fair and just to the Railway Company, the Company has received everything to which it is entitled. Now, I don't know what you mean by "competitive conditions" and "commercial conditions" which the Railway Company has any right to take into consideration, conceding that it has received full compensation for its services; and will you please explain to me what you mean when you say that to the proper compensation should be added the other conditions you mention?

A. I spoke of those conditions as influencing the making of rates. Now, with reference to competitive conditions, I might illustrate by saying that we must compete between St. Paul and Chicago and New York with carriers on the Atlantic and the Pacific oceans for the traffic from the East to the West. Those conditions govern us in the making of rates. That I would understand as "competitive conditions." Now, as to commercial conditions,—I cited an instance of the rates to Butte from the different commercial centers. The competition which the merchant at St. Paul has in Butte is with the merchants in all of these different distributing points, and it is to the interest of the shipper in Butte that he should have access to all of these different markets, and it is to the interest of the Railway Company that they should give him access to markets which they reach on an equality with markets reached by other lines.

Mr. HOW: It is an advantage to the State of Minnesota to be able to reach it, isn't it?

WITNESS: It is a decided advantage.

Q. Then I understand you when you speak of competitive conditions to refer first to the competition between railway companies?

A. Between railway companies or other common carriers.

Q. That consideration does not enter into the matter which we are now speaking of with reference to Exhibit 48?

A. No, sir; it does not, except in an incidental way. Of course, the rates to Bismarck are, to a certain extent, governed by competition, and Mandan is on the other side of the river, about five miles from Bismarck, and, of course, while there may not be direct competition at Mandan, it may be influenced by competition on the other side of the river.

Q. But you said, yesterday, that the rates used by the Milwaukee road to Bismarck had no effect upon the reductions which you made.

A. No, the construction of the Milwaukee road through North Dakota has had, as yet, no effect in the way of reductions in our rates to points in North Dakota.

Q. So that from this computation we can eliminate the question of competition between public carriers.

A. Well, I was referring there to Bismarck, not to the competition of the Milwaukee but the competition of the Soo Line. That reaches Bismarck, and not the Milwaukee.

Q. So that the question of competition between carriers does not enter into this question?

A. Not into that computation, but it is liable to enter into the question of making rates at any time.

Q. Oh, yes, I realize that, but we are speaking now of a concrete case, we must confine ourselves to that. The competition between communities that you speak of is where your line of road reaches a certain community, let us say from the South, and another line of road reaches that community from another point of the compass, the community lying west of the intersecting point produces commodities of the same character as does the community lying south of the intersecting point, those two communities are in competition for the business of the community at the place where the roads intersect; is that true?

A. That is correct, yes, sir.

Q. And in establishing your rates to those intersecting points, you would consider the practicability of those rates with reference to enabling the community served by your Road marketing its products at the central community in competition with the community served by the other roads?

A. Yes, sir, we would.

Q. And you would do that because otherwise you would receive no freight?

A. We would have to have the rates over the Northern Pacific Railway into the intersecting points relatively on a fair basis as compared with the rates of the competing line from other distributing or commercial centers, in order to receive a fair share of that competitive business.

Q. And so where there is water competition or you meet a short line, your rates are reduced, for the same reason, to enable you to get part of the traffic?

A. Well, I don't understand your reference to the short line.

Q. Well, for instance, the Great Northern road is the short line between Duluth and Crookston, is it not?

A. Oh, yes, I understand; but I think your question brought in the question of water competition, also.

Q. I say where the Railway Company comes in competition with the transportation of freight by water, or where you come in competition with a railway which is the shortest line between two points, you take those facts into consideration and reduce your rates accordingly, for the purpose of getting part of the traffic?

A. That is correct, yes, sir.

Q. So that the question of competition comes down to the question of getting a portion of the traffic?

A. That is right.

Q. And where necessary you reduce your rates to the low-

est possible point?

A. We keep them, of course, as high as we can to meet that competition.

Q. Now, that competition, competition of that character, does not enter into the rates specified in Exhibit 48, because we are speaking of traffic that must pass over your road, in either event. The only question is whether it passes over your road in carload lots or in less than carload lots at a through rate or upon two local rates. Isn't that true?

A. I wouldn't want to say, though, that in that case competition is entirely eliminated, because I don't see that it is; you have the competition of other carriers in the same section, you can't get away from that competition; you also have the competition of the various distributing centers.

Q. You have the short line to Fargo?

A. No, the Great Northern has the short line to Fargo.

Q. From Duluth?

A. From St. Paul.

Q. How much shorter than yours?

A. About ten miles.

Q. The distance by the Milwaukee road is how much to Fargo?

A. I haven't that distance here, but it is longer than either the Great Northern or the Northern Pacific.

Q. All of these rates are based practically upon the mileage of your road or the Great Northern road?

A. That is, the state rates are, but all of the commodities and all of the rates into Fargo are not, by any means, within the state of Minnesota.

Q. Now, explain to me how any advantage can come to a shipper in Fargo, or a shipper in Mandan, from using the Great Northern rates instead of your rates.

A. There would be no advantage in a shipper, at the present time, on a shipment originating at St. Paul, originating at

Duluth, in using one rate any more than the other, because they are both the same.

Q. Therefore, it is true, is it not, that the question of competition between railroads does not enter into this particular rate?

A. Yes, I think it does enter very much into this particular rate.

Q. Well, how?

A. A large part of the shipments into Fargo originate in territory outside of the state of Minnesota. The Milwaukee & St. Paul, for instance, have a line running from Chicago and Milwaukee, and other points in Illinois and Wisconsin, where these commodities are manufactured, direct to Fargo. Our rates from that territory to Fargo are based on the competitive rates made by the Milwaukee & St. Paul road. We have recently found, in the last few days, that they have published some rates from Illinois into Fargo that are lower than ours. Now, we must meet that condition. It is a condition that is always with us in the making of rates into any competitive point. If these rates were confined, and if our business was confined, at Fargo, to business originating in the state of Minnesota, then the legislative rates, under the present conditions, would control; but it is not confined to state business.

Q. Well, I understand, then, you desire to change or correct your testimony of yesterday that the Milwaukee and Soo roads have had no effect upon your rates into Dakota?

A. At that time I think I was speaking with reference to the rates shown in those exhibits.

Q. Well, I have no doubt, Mr. Baird, that whatever you were speaking of you were telling exactly as you understood it, and I am simply calling your attention to this matter.

A. These exhibits have taken into consideration the rates from St. Paul and our eastern terminals. Now, it is true, probably, that the construction of the Milwaukee & St. Paul road

into South Dakota has affected some through rates, but they are not any rates that are shown in these exhibits.

Q. Then if they are not any rates that are shown in these exhibits, that question of competition between carriers must be excluded in ascertaining the propriety of your rates and the propriety of the comparisons that you have made, must they not?

A. I don't think that we attempted, in any of those exhibits, to show that there was any competition which required any lower basis of rates to Dickinson, North Dakota, for instance, than we had already established.

Q. Then competitive conditions are eliminated so far as competition between carriers is concerned?

A. No, sir; I don't admit that.

Q. Well, you seem to include it one time and exclude it another time; I don't understand you.

A. Well, we were talking about two different sets of conditions.

Q. Well now, let me get at this again. You have called attention to the fact, in Exhibit 48, that the through rate from St. Paul to Mandan of 67 cents per hundred pounds is greater than the carload rate from St. Paul to Fargo, plus less than carload rates from Fargo to Mandan?

A. Yes, sir.

Q. What competitive conditions entered into the establishment of the rate of 67 cents from St. Paul to Mandan?

A. The competition of other carriers in the same section, of course, had to be taken into consideration.

Q. That was a rate established by you—by your Road—that 67 cents?

A. Yes, sir.

Q. In ascertaining whether or not it would be fair to permit the merchant in Fargo to purchase his merchandise in carload lots at St. Paul and deliver them in Mandan in less than

carload lots for an aggregate rate of 60.7 cents per hundred pounds, what other or additional competitive rates were considered?

A. There were no other rates other than the rate from St. Paul to Fargo and the rate from Fargo to Mandan.

Q. Is it not true that it is entirely a question as to the Fargo merchant and the St. Paul merchant?

A. On the item of beans, for instance?

Q. Yes.

A. It is not necessarily true, because beans are raised on the Pacific coast, and, as a matter of fact, it might be a question with the St. Paul merchant or the Fargo merchant, or a merchant out in San Francisco or Portland.

Q. Is that a question?

A. That question is a question with the merchant in purchasing his supplies.

Q. Is that a practical question in the establishment of these rates?

A. Of course it is taken into consideration in making rates on any commodity, but in establishing a class rate from St. Paul to Mandan, the rate on beans from the Pacific coast would not be taken into consideration.

Q. Well, was it taken into consideration in establishing this rate?

A. In the 67 cents less than carload rate?

Q. Any one of the three rates.

A. No, it was not.

Q. Then you should not have referred to it. I am asking you for actual conditions with regard to this concrete case. Now, of course, all of those matters come into the question of rate-making in its entirety, and in the particular case they must be taken into consideration, but you are giving us specific instances?

A. Yes.

Q. And I don't think, Mr. Baird, when you give us a specific instance, that you ought to refer to general conditions as having been taken into consideration.

A. Well, I want to make myself clear in that, because I don't want to confuse the subject, but while the making of that particular rate may not have been influenced by conditions outside of those rates themselves, it is liable to at any time be a condition which will influence our rates between those points or similar points.

Q. Well, don't you think we have trouble enough in this case now without going into—

A. I thought you wanted me to admit that there was no element of competition could govern the making of rates between those points. Now, I can't admit that.

Q. Well, I am speaking of this rate. It doesn't, in this case, does it?

A. It did not in that particular case.

Q. Now, is there any difference, relatively, with reference to the rates found in the second column of Exhibit 48, "canned meats and soups," or do the same principles practically apply?

A. The same principles practically apply.

Q. And is that true of the other three columns?

A. Yes, sir.

Q. The last column refers to oranges. To what classification do oranges belong, or do they come under the head of commodities?

A. They come under first class in less than carloads, and third class in carloads.

Q. And what is the rate from St. Paul to Fargo upon oranges in carload lots?

A. 36.1 cents per hundred pounds, at the present time.

Q. And that is how much per ton?

A. $7.22 per ton.

Q. That is in carload lots?

A. Yes, sir.

Q. What is the rate from San Francisco to St. Paul upon oranges in carload lots?

A. $1.15 per hundred pounds, I believe.

Q. And that is $23 per ton?

A. That is correct, yes, sir.

Q. And what is the distance from San Francisco to St. Paul?

A. I should say about 2,200 miles, in round numbers.

The MASTER: By your road, do you mean?

WITNESS: No, that is by the short line.

Q. The rate is a little more than three times as much, and the distance is seven times as great?

A. Well, I don't know that your computations are exactly correct. Seven times the distance would be 1,750 miles, and I said 2,200 miles.

Q. Well, that is eight times, isn't it?

A. Nine times.

Q. What is the rate from San Francisco to Fargo, upon oranges, per ton?

A. I think it is $1.25 per hundred pounds.

Q. And to St. Paul?

A. $1.15 per hundred pounds.

Q. And from San Francisco to New York?

A. $1.15, I believe.

Q. Per hundred pounds?

A. Yes, sir.

Q. And from New York across the Atlantic, do you know what it is?

A. I don't know what that is, no.

Q. Can you now give me the rate upon apples from coast points?

A. Where to.

Q. Well, the same places that you have given the rates upon

oranges.

A. The rates on apples from points in the Yakima valley and the Wenatchee valley, in Washington, are to St. Paul, 85 cents per hundred pounds in carload lots, and New York $1 per hundred pounds.

Q. And to Fargo?

A. 75 cents, I believe; I think 75 cents is the rate.

Q. What is the general distance from those points which you have mentioned in Washington, to St. Paul?

A. About 1,700 miles, over the Northern Pacific railway, from Yakima valley points.

Q. I presume the longest haul that you have, exclusively in Minnesota, on apples, is from the Twin Cities to East Grand Forks?

A. Yes, sir, St. Paul to East Grand Forks.

Q. Now, what class do apples, in carload lots, take?

A. In the classification they take fifth class.

Q. And what would be the rate from St. Paul to East Grand Forks upon apples?

A. 24.4 cents per hundred pounds.

Q. The distance is how much?

A. 320 miles by the Northern Pacific.

Q. So the rate allowed by the legislature for a haul of 320 miles is 24 cents per hundred pounds?

A. Yes, sir, 24.4 cents.

Q. And the rate in force upon the Northern Pacific for a haul from Washington of 1,700 miles is—

A. 85 cents.

Q. Per hundred pounds.

A. Yes, sir.

Q. Now, give that in tons in the record here.

A. 24.4 cents per hundred pounds is $4.88 a ton, and 85 cents is $17 a ton.

Q. Now, the Minnesota rate is how much per ton per mile?

A. For the 320 miles?

Q. Yes.

A. About a cent and a half a ton a mile.

Q. And the interstate rate from Washington is how much?

A. About one cent per ton per mile.

Q. Will you please ascertain whether or not you have a through rate upon cattle from East Grand Forks to Chicago?

A. This tariff shows a rate from East Grand Forks to Chicago of 36 cents per hundred pounds.

Q. Will you please state whether or not you know the rate from the Twin Cities to Chicago?

A. The tariff referred to, I notice, is dated November, 1902, and I make the statement that the rate is 36 cents per hundred pounds, of course, based on the assumption that this tariff is now in effect. I do not know what the local rate is from St. Paul to Chicago.

Q. Will you please state what the rate would be according to Chapter 232 from East Grand Forks to St. Paul?

A. On cattle, carloads, 19 cents per hundred pounds.

Q. Now, I desire that you should assume that the rate between the Twin Cities and Chicago upon cattle is 20 cents per hundred pounds—if you will be good enough to look that up this evening and correct me, if I am mistaken.

A. Yes, sir.

Q. If I am correct in that statement, the sum of those two locals would be 39 cents?

A. 39, that is right.

Q. While the rate established and in force since 1902, as a through rate, was 36 cents?

A. Yes, sir.

Q. Now, that rate of 19 cents from East Grand Forks to St. Paul is $3.80 per ton, is it not?

A. Yes, sir.

Q. And that is how much per ton per mile?

A. About 1.2 cents per ton per mile.

Q. If that rate were extended to Chicago, what would be the through rate from East Grand Forks to Chicago, making the extension at the rate of 1.2 cents per ton per mile?

A. 43.8 cents per hundred pounds.

Q. And your present rate is 36?

A. The present rate of 36 is based, I believe, on allowing the Northern Pacific Railway the full local rate from Grand Forks to St. Paul; and the movement of cattle between Grand Forks and St. Paul, of course, is very small, only a car here and there occasionally, whereas, the rate from St. Paul to Chicago is based on handling a very large volume of traffic, and the rate, therefore, from St. Paul to Chicago is correspondingly a much lower rate than the rate from East Grand Forks to St. Paul.

Q. In computing the rate from East Grand Forks to Chicago at 1.2 cents per ton per mile, did you figure that on the distance from here to Chicago or from the rate to East Grand Forks?

A. East Grand Forks to Chicago, 730 miles.

Q. Making a rate of 43 cents per hundred pounds?

A. 43.8 cents per hundred pounds.

Adjourned until Friday, December 4th, at 10 o'clock, A. M.

FEDERAL BUILDING, St. Paul, Minn., Friday, December 4, 1908. Hearing resumed pursuant to adjournment.

JOHN B. BAIRD,

recalled for further cross-examination, testified.

By Mr. O'BRIEN:

Q. Mr. Baird, did you verify my statement suggesting that the local rate for cattle between the Twin Cities and Chicago was 20 cents per hundred?

A. Yes, sir; and I found that there were three rates between the Twin Cities and Chicago, one a local rate of 25 cents per

hundred pounds; another a rate of 20 cents per hundred pounds, applying on fat cattle, originating west of the Twin Cities; and a proportional rate of 15 cents per hundred pounds on stock-cattle, originating west of Minnesota Transfer, destined east of the Illinois-Indiana state line.

Q. Now, will you please explain what you mean by a "proportional rate"?

A. The 15 cent proportional rate, I understand, applies on stock-cattle, originating west of the Twin Cities and destined to points east of the Illinois-Indiana state line, and it does not apply on traffic destined to Chicago locally. The tariffs, of course, not being published by the Northern Pacific Railway, I can only assume that that is the interpretation that would be put on them by the issuing lines. That is as I understand it.

Q. Well, then, is 20 cents what would be known as the local rate upon fat cattle, between the Twin Cities and Chicago?

A. If the cattle originated at points, for instance, on the Northern Pacific Railway west of St. Paul, and the identity of those cattle was preserved, the rate from Minnesota Transfer, or South St. Paul, to Chicago would be 20 cents per hundred pounds.

Q. Well, supposing the shipment originated at the Twin Cities or South St. Paul?

A. Then I understand the local rate is 25 cents.

Q. Then the rate would 25 cents?

A. Yes, sir.

Q. Practically, the 25-cent rate is never used?

A. I imagine it is not. Of course, the bulk of the cattle that are shipped from Minnesota Transfer, or South St. Paul, originates in the territory west of here.

Q. And the proportional rate of 15 cents does not apply to the traffic between the Twin Cities and Chicago?

A. No, sir.

Q. So that, as a practical matter, the 20-cent local rate is

correct?

A. That is, the 15 cents of course applies between the Twin Cities and Chicago, but applies only on stock-cattle coming from west of the Twin Cities and going east of Chicago. So that that local—

Q. I mean it does not apply to shipments terminating at Chicago?

A. Not as I understand the tariff and as the information was given to me.

Q. Little Falls is situated upon your line of railway in this state, is it not?

A. Yes, sir.

Q. And a large amount of lumber is manufactured there?

A. Yes, sir.

Q. What is the through rate upon lumber from Little Falls to Chicago?

A. Well, I am not quite positive as to that, but I think it is 13 cents per hundred pounds.

Q. What is the rate upon lumber between the Twin Cities and Chicago?

A. 10 cents, I believe.

Q. What is the rate upon lumber from Little Falls to the Minnesota Transfer or the Twin Cities?

A. As I recall it, the local rate from Little Falls to the Minnesota Transfer is five cents.

Q. That is the rate in force upon your road?

A. At the present time.

Q. Have you got those tariffs?

A. I haven't those tariffs with me. I am only speaking from my recollection and general knowledge of the rates.

Q. What is the distance from Little Falls to the Minnesota Transfer?

A. About 100 miles.

Q. It is 148 miles to Duluth and 101 miles to St. Paul, is

it not?

A. Little Falls is 106.1 miles to St. Paul; to Duluth it is 139.8 miles.

Q. What rate is fixed by Chapter 232, laws 1907, upon lumber per hundred weight for a distance of 100 miles?

A. 9 cents.

Q. And the rate of the Company from Little Falls is five cents?

A. That is my recollection.

Q. Have you the same relative rates from the different producing points with regard to lumber upon your road?

A. The same relative rates to the Minnesota Transfer, you mean?

Q. Yes.

A. From the different producing points?

Q. Yes.

A. Yes, sir, we have.

Q. For instance, what is the rate from Stillwater to Minnesota Transfer?

A. Well, I couldn't give you the actual rate there. I think it is 2½ cents, although I am not sure.

Q. Well, you haven't your lumber rates from different points. There are mills situated at various points upon the line of the Road?

A. There are mills situated at Cloquet, Stillwater, Duluth, Minneapolis, Little Falls, Frazee, Crookston; I think that is about all.

Q. Well, let us take Crookston; what is the rate from Crookston to Chicago?

A. As I recall it, it is 17 or 18 cents per hundred pounds.

Q. And what is the rate from Crookston to Minnesota Transfer?

A. Well, I haven't the figures, and I couldn't give you that. I don't recall it.

Q. If it is based on the same proportion as the rate from Little Falls, that would be 9 cents, wouldn't it?

A. 290 miles to Crookston, and if it was based on distance, it would be about three times the rate from St. Paul, or about 15 cents.

Mr. STAPLES: Well, it is not based on distance.

WITNESS: I know it is not based on distance. All of the rates to Chicago are based on a rate from Duluth to Chicago, which is, of course, fixed by the competition of the water-carriers, by the boat lines carrying lumber from Duluth to Chicago. All of the other mills bear a certain relation to that 10-cent rate established by the competitive conditions between Duluth and Chicago. Of course, it is necessary that we should put the mills located on our line on a basis which is relatively fair as compared with the 10-cent rate from Duluth. That is the influence which fixes the rates from the lumber-mill points on our line.

Q. Your rates upon lumber are not at present so low, however, as to be unremunerative, are they?

A. They are relatively much lower than the rates which we make for shipments of lumber between other points, and while they pay something in excess of the cost of transportation, I would not want to say that they were remunerative in the sense that they pay a fair share of the total transportation charge.

Q. Well, now, if a rate from Little Falls to St. Paul of five cents per hundred weight, which I believe is five mills per ton per mile,—is that right?

A. No, it would be a cent a ton a mile; five cents would be a dollar a ton; 100 miles would be a cent a mile.

Q. If one cent per ton per mile is sufficient to pay the cost of the service, can you claim that the schedule found in Chapter 232, which allows 9 cents per hundred weight or $18 per ton, for a haul of 100 miles, is confiscatory?

A. While the rate of five cents, which is all that we can secure for the handling of lumber between Little Falls and Minnesota Transfer, may be a fair rate under those conditions, it is not a fair rate if it is to be applied generally all over the Northern Pacific line and made the basis for all of our rates in this section of the country.

Q. A lumber-dealer situated at the Twin Cities could purchase lumber at Little Falls and have it shipped from there to the Minnesota Transfer in carload lots upon your line at a rate of five cents per hundred pounds; is that true?

A. Yes, sir.

Q. And you state that that charge is sufficient to pay the cost of the service?

A. I believe it is sufficient to pay the actual haulage charge.

Q. Now, after receiving that lumber at the Minnesota Transfer, and without its being taken from the cars, the dealer sells it to a man whose lumber- yard is located at a point upon the Chicago, Milwaukee & St. Paul Railway, or any of the other railroads in the state, which is distant just 100 miles from the Minnesota Transfer; the charge which Chapter 232 permits to be made for hauling that same car that 100 miles from the Minnesota Transfer is $18 per ton; how can you claim that that rate is confiscatory as to the road required to haul it when your road has already rendered exactly the same service for $10 per ton?

A. The conditions with respect to the movement of that lumber between Little Falls and Minneapolis, or Minnesota Transfer, are entirely different from the conditions which surround the movement of that traffic to a point 100 miles south of Minnesota Transfer. Little Falls and Minneapolis get their supply of logs from the same territory, that is, from the forests in northern Minnesota, and they are floated down the Mississippi river. It cost the millman at Little Falls approximately as much per thousand feet to get his logs delivered at Little

Falls as it does the millman at Minneapolis. That is the information that has been given to us, and I am assuming that it is correct. Therefore, to enable the manufacturer at Little Falls to place his lumber in Minneapolis, it is necessary for us to take that fact into consideration.

Q. Mr. Baird, that statement of yours is very clear for the purpose of showing why you would give an especially low rate to Little Falls, but that is not what I am speaking about. The operating expenses of the Northern Pacific Railway Company absorb about 65 per cent of its earnings, do they not, from 60 to 65 per cent? I haven't the figures with me now.

A. Well, I haven't the figures with me, but they absorb a large proportion, of course, of the earnings.

Q. Well, now, you have stated that the charge of $10 per ton pays the cost of the service from Little Falls to St. Paul. I am not speaking of the lumber-dealer or the millman; I am speaking of the Northern Pacific Railway Company; it pays the cost of the service.. Now, the rate which Chapter 232 allows, for a haul of that distance, is $18 per ton; now, if over your entire System your operating expenses amount to 65 per cent of your gross receipts, and if the hauling of lumber costs $10 per ton, an allowance of $18 per ton for that haul gives you a larger percentage of profit than you receive generally upon road, does it not?

A. Well, I think you must have misunderstood me, Mr. O'Brien, because I admitted that the rate from Little Falls paid the actual hauling charge; I did not intend to admit that it paid its proportion of the total operating expense, including interest, etc., and the charge for the maintenance of the property, because that is a matter that I don't feel as though I could answer definitely, either one way or the other.

Q. So that you actually do not know, then, whether it pays the cost of the service or not?

A. I do not know whether it pays its proportion of the entire

cost of operating the road, including the maintenance, the operating, the interest, etc.

Q. The percentage that I gave you as the percentage of your operating expenses did not include the interest, either, because interest is not a portion of operating expenses. Mr. Baird, could you get those tariffs that we were speaking of the lumber tariffs?

A. Do you want them this morning?

Q. Yes; I think I will be through with you in a few minutes.

Witness telephones for tariffs asked for.

giving a comparison of rates, which I wish you would explain

Q. On the second page of Ex. 35—Baird, appears a table once more.

A. The first row of rates, 100 miles interstate, is the present distance tariff applying between points in Minnesota and points in North Dakota for that distance. The rates shown 90 miles east and 10 miles west are the sum of the local rates, 90 miles in Minnesota and 10 Miles in North Dakota, applied in each direction; that is, west-bound the rates in Minnesota would vary, because the west-bound rates from a point 10 miles east of Moorhead are on a little higher basis than the east-bound rates from Moorhead for the same 10 miles, and that same variation would follow down through the other rates for the different hauls in Minnesota.

Q. When you speak of the locals, what do you mean—the local distance tariff?

A. That would be, for instance,—the 90 miles east and 10 miles west would be figured on the Minnesota local distance tariff for 90 miles.

Q. The Commission's rate?

A. The Commission's rate; and, for the 10 miles west, would be figured on the North Dakota distance tariff, which is the same as the Interstate distance tariff. Then in the opposite direction it would be 10 miles local in North Dakota, at the

North Dakota distance tariff rate, and 90 miles in Minnesota based on the distributing rates from Moorhead for 90 miles in Minnesota, which are a little lower than the distance tariff rates for the same distance.

Q. Is there any traffic of the description given in the second page?

A. Well, without looking it up I could not say that there was, but I can imagine conditions where something of this kind might arise.

Q. But, so far as you know, there are no conditions to which this computation would apply?

A. Well, I have not looked up the records to find out whether there have been or not.

Q. And you didn't make it with reference to any particular condition?

A. Well, with the condition that might exist at any time; for instance, if a produce dealer in Moorhead was buying eggs in Minnesota and shipping them into Moorhead locally and then shipping them out to North Dakota, then this condition would exist, this varying rate for each of these totals of 100 miles.

Q. Well, you don't think that the hens located 90 miles east of Moorhead would be entitled to the same consideration, then, that the lumber-mills are, located at Little Falls?

A. Well, these rates have been made, so far as Minnesota was concerned, by the Commission.

Q. But as a matter of fact, these rates are not based upon any actual transactions?

A. That is, we did not look up any actual transactions in making these figures.

Q. And you don't know of any traffic upon the road which would come under these conditions which you have mentioned?

A. I can only suppose conditions such as I have named above, where the rates might be on this basis,—where they

would be on this basis.

Q. While waiting for the tariff-sheets that you have sent for, I can possibly save time by calling your attention to another matter. You have testified, at some length, as to the necessity for equality in rates, and by that I presume you mean relative equality?

A. Yes, sir.

Q. Now, the same necessity which exists for relative equality in the rates upon one road, exists with reference to the rates between different roads in the same territory, does it not?

A. In a general way, I should think that would be so.

Q. That is, it is just as necessary and just as desirable that the rates in Minnesota should be relatively equal?

A. All conditions considered, yes.

Q. Now, prior to the promulgation or adoption of the Commissioner's order of September 6, 1906, that condition did not exist in Minnesota with reference to merchandise, did it?

A. You refer to the rates wholly within the state?

Q. Yes.

A. In a general way I think it did.

Q. Were not the rates upon merchandise upon the Northern Pacific railway, the Great Northern railway and the Soo road, much higher than the merchandise rates to be found upon the roads serving the southern part of the state?

A. I think, in a general way, that is true, but the rates in the southern part of the state were influenced somewhat by conditions which did not exist in the north; that is a line running south from Minnesota Transfer, reached territory where there was competition with the direct lines from Chicago and other commercial centers, and while our rates on merchandise on the north have been on a little higher basis than the rates of the other lines which were made under somewhat different conditions, I think our rates on grain, taken as a whole, were a little lower than the rates of the southern lines.

Q. Yes, I was going to come to that. Is it not true that the rates upon the northern roads upon grain were very much lower than the rates upon grain in the southern portion of the state?

A. I think, as a general statement, that is true.

Q. So that whatever equality was to be found between the roads serving the northern part of the state and the roads serving the southern part of the state, was simply in the total receipts?

A. Well, I wouldn't want to say that there was an exact equality as to the total receipts. Of course our tariffs expressed our judgment in those matters.

Q. The result, however, was that the rates in Minnesota were unequal?

A. Yes, there were a great many inequalities in the rates in Minnesota. I might add to that answer, also: owing to the different conditions which existed in different sections of the state.

Q. I now call your attention to the rates upon commodities which are at present in force in the state of Minnesota and included within the schedule found in Chapter 232. Beginning at a distance of 50 miles from the Minnesota Transfer, is it not true that the rates upon flax varied from 9 cents per hundred to 6 cents per hundred, a difference of 33⅓ per cent?

A. Are you comparing there the rates of the Northern Pacific with the rates of other lines equally distant from the Minnesota Transfer?

Q. Yes.

A. Well, I haven't any information here which shows just what the rates of the other lines are for that distance.

Q. So that you could not answer?

A. I couldn't answer that question, one way or the other.

Q. Assuming that the rate to be found upon one of the railroads in the state for hauling wheat 50 miles from one station

1575

would be on this basis.

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A. Yes, sir.

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Q. Yes.

A. Well, I haven't any information here which shows just what the rates of the other lines are for that distance.

Q. So that you could not answer?

A. I couldn't answer that question, one way or the other.

Q. Assuming that the rate to be found upon one of the railroads in the state for hauling wheat 50 miles from one station

was 9 cents per hundred weight, while the rate upon the Northern Pacific Railway for hauling the same distance was 6½ cents per hundred weight, and the rate upon the Great Northern 6 cents per hundred weight, upon the Chicago, Rock Island & Pacific 8 cents per hundred weight, upon the Chicago Great Western road 6.9 cents per hundred weight, would you not say that that presented a condition of inequality of rates requiring some adjustment?

A. I couldn't say that without knowing what the conditions are which influenced the fixing of those rates at those various points.

Q. Well, you have a sufficient knowledge of the situation in Minnesota, Mr. Baird, to be able to say whether or not, in your judgment, that would be a condition that would call for readjustment?

A. I do not know what influence fixes the rates on the lines south of Minneapolis; for instance, whether the rates to Chicago are a factor in the making of the rates to Minneapolis from the same stations. On the Northern Pacific, of course, we try to adjust the rates so that they will be the same as they are from competing stations, situated on our own or on other lines, the same relatively.

Q. If you should ascertain the fact to be that wheat was hauled upon the Northern Pacific railway for a distance of 150 miles for 9 cents per hundred weight, and that upon another road in the state a charge was made for a haul of the same distance of 12½ cents,—a difference, basing the percentage upon the Northern Pacific rate,—of nearly 40 per cent, would you not say that that presented a condition of inequality in rates requiring adjustment?

A. Well, I would not like to answer that just based on that general statement, because I am not acquainted with the facts with reference to the making of the rates from the other points; I don't know what the volume of their tonnage is, whether it

s from stations that are wheat-producing stations or what ther factors enter into the making of a rate from a point on nother road.

Q. And if you should ascertain that the rate upon hogs upon the Northern Pacific Railway for a haul of 300 miles vas 26 cents per hundred weight, and that upon another road n the state a similar haul was made at a rate of 19 cents per nundred weight (a difference in rates, basing the percentage upon the lower rate, of some 35 per cent) would you not say hat that would present a condition of inequality of rates requiring some adjustment?

A. Without taking into consideration the volume of traffic and other conditions which enter into the consideration of the making of these rates, I wouldn't care to express such an opinion.

Q. Mr. Baird, is it true that upon the Northern Pacific railway in Minnesota the tariffs maintained upon commodities maintain the same relative charge upon each commodity? By that I mean that if you find that flax and wheat and coarse grain are hauled at the same rate from one station upon the road that they are hauled relatively to each other from each of the other stations upon the road.

A. I wouldn't want to answer definitely without looking at the tariffs. Maybe I have a tariff here which will show. (After looking at tariffs.) Our tariffs show that the rates on flax and wheat, for instance, are the same from points in Minnesota to Duluth and Minneapolis; that is, the same per hundred pounds.

Mr. HOW: You mean for similar distances?

WITNESS: For similar distances; from the same points.

Q. Then, upon the Northern Pacific road, so far as you know, (and I want to embody in the question so far as I know myself) you will find that, from each station, wheat, flax and coarse grain bear like rates?

A. Yes, sir.

Q. Would you consider it possible that conditions could arise in which you would be justified in charging the same rate upon flax and wheat and coarse grain, from one of the stations in Minnesota, and from another station 10 per cent more for one of those commodities than you charged for the other commodity?

A. Conditions might arise which would make such an adjustment fair, considering all of the conditions surrounding it.

Q. You never heard of any such conditions?

A. Why, I have heard of conditions which would seem to warrant varying rates on different commodities, but I wouldn't want to fix any particular difference because I never made any particular investigation as to the conditions.

Q. Well, so far as wheat and flax and coarse grain are concerned, in the state of Minnesota, you know of no conditions which would justify that variance in rates?

A. Why, there are conditions, yes; for instance, there is practically no corn raised up in the northern part of the state, and the tonnage would be very unimportant in amount, if any, and that is a condition which seems to me would warrant a different basis of rates on corn from that section of the country than would apply from a corn-producing section.

Q. You, however, do not understand that I am speaking of commodities upon the same road and in the same section. For instance, there is the station upon the Northern Pacific known as Luce, distant 195 miles from the Minnesota Transfer; assuming that the rates upon wheat, flax and coarse grain are the same from Luce to Minnesota Transfer, would you feel justified in establishing rates upon wheat, flax and coarse grain at Frazee, another station upon your road, located 200 miles from the Minnesota Transfer, which were not equal?

A. That would depend on the conditions. Conditions

might arise under which it might be necessary to make a different rate on one of those commodities than applied on the other. At the present time our rates are the same.

Q. I know they are.

A. Because there are no conditions which, in our judgment, require any different basis of the rates; but conditions might arise which would seem to warrant some change in the relation of the rates between the two commodities.

Q. In the absence of some special conditions, which you cannot now state, you know of no justification for that condition, do you?

A. Well, that would depend somewhat on the rates themselves; but taking the two stations that you name, there is at the present time, as I understand it, no justification for making a different rate from one station than you make from the other; that is, relatively, distance considered.

Q. Is not this a true statement, that upon the face of such a condition as I have described, where the rates upon the same road in the same territory, upon three different commodities, agree at one station and vary at another station, there is an inequality in the rates somewhere?

A. There is an inequality in the rates but there may be (of course I don't know as to that) some conditions which will justify that inequality.

Q. But there is an inequality in the rates which you, as a practical traffic manager, say requires explanation?

A. Well, if there is any great inequality, why—

Q. It may require a great explanation?

A. Yes.

Q. If it is a slight inequality, it might require a slight explanation?

A. It might.

Q. Yes. Well, now, it is an inequality, however, which requires an explanation?

A. Yes.

Q. Well, that is all. Now, have you verified the rate on lumber from Little Falls to the Minnesota Transfer?

A. It is 5 cents per hundred pounds.

Q. And the rate from Little Falls to Chicago, I think you said, was 13 cents per hundred pounds?

A. That is correct.

Q. And the local rate from the Twin Cities to Chicago is 10 cents per hundred pounds?

A. I believe it is 10, yes; I think that is correct; I think it is the same as for Duluth.

Q. The sum of the locals (15 cents) would be two cents more per hundred pounds than your present through rate?

A. Yes, sir.

Q. Well, if for your rate from Little Falls to the Twin Cities there should be substituted the rate for a haul of 100 miles allowed by the Commission of 9 cents per hundred pounds, the sum of the locals would be 19 cents?

A. Yes, sir.

Q. Now, what is the rate from Frazee to the Twin Cities?

A. 7 cents per hundred pounds.

Q. Frazee is located 200 miles from the Twin Cities?

A. Yes, sir, substantially 200 miles.

Q. And what is the rate allowed by Chapter 232 for a haul of 200 miles?

A. 11 cents.

Q. And what is the through rate published by you from Frazee to Chicago?

A. 14½ cents.

Q. The sum of the locals, as at present maintained, would be 17 cents?

A. Yes, sir.

Q. And the sum of the locals, if the Minnesota tariff was in force, would be 21 cents?

A. Yes, sir.

Q. And the additional amount allowed by the Minnesota tariff for hauling 200 miles instead of 100 miles is 2 cents; the tariff for 100 miles was 9 cents?

A. Yes, sir; that is correct.

Q. And the additional charge for hauling from Frazee, rather than from Little Falls, to the Twin Cities, the first being 200 miles and the second 100 miles, is two cents?

A. Yes, sir.

Q. And the only difference in those schedules (that is, the schedule now in use by your road and the schedule found in Chapter 232,) is that the amount allowed under the legislative schedule for the haul of 100 miles is 9 cents and that published by your road is 5 cents?

A. That is correct.

Q. Have you rates upon lumber from Little Falls to points in Dakota?

A. Yes, sir.

Q. What is the present rate from Little Falls to Fargo on lumber?

A. 13½ cents per hundred pounds.

Q. And what is that distance?

A. 134 miles.

Q. And what would be the rate allowed under the order of the Commission for 134 miles?

A. 9.8 cents per hundred pounds.

Q. Now, what is the rate from Little Falls to Bismarck, as published by you?

A. I think it is 20 cents.

Q. Per hundred?

A. Yes, sir.

Q. That is $4 per ton?

A. Yes, sir.

Q. And what is the distance?

A. 337 miles.

Q. Now, what is the rate upon lumber from Tacoma to Bismarck?

A. 40 cents per hundred pounds.

Q. That would be $8 per ton?

A. Yes, sir.

Q. And the distance is about 1600 miles?

A. You mean from Tacoma? I can give you the exact distance.

Q. I am talking of Puget Sound points. An average of 2,000 miles to the Twin Cities is fair, isn't it?

A. The distance from Tacoma is 1462 miles, and from Portland it is 1667 miles, from Bismarck.

Q. The rate is the same?

A. The rate is the same, yes.

Q. The rate allowed, you said, was 9.8 cents from Little Falls to Moorhead or Fargo?

A. Yes, 135 miles, 9.8 cents.

Q. That is how much per ton per mile?

A. That would be about a cent and a half a ton a mile.

Q. And what would that make the rate from Little Falls to Bismarck, on that basis of a cent and a half?

A. It would make it 25 cents per hundred pounds.

Q And the rate is—

A. 20 cents per hundred pounds.

Q. At the rate in force from Portland to Bismarck, 40 cents per hundred for 1600 miles, will you compute that upon the same basis ascertaining what that is per ton per mile?

A. It would be fair to take an average distance there, because Portland is the greatest distance and there is very little lumber moves from Portland; more moves from Puget Sound.

Q. All right, take any distance that you think is fair, Mr. Baird.

A. Well, we will say 1500 miles to Bismarck. You want

the rate per ton per mile?

Q. Yes, I want you to find the rate per ton per mile, and then I want you to apply that rate to the distance from Little Falls to Bismarck.

A. Based on 1500 miles at a 40-cent rate to Bismarck, the rate per ton per mile would be .53 of a cent, and applying that same rate per ton per mile for a distance of 337 miles from Little Falls to Bismarck, would make a rate of about 9 cents per hundred pounds.

Q. If you, then, adopted the same method for extending the rate on lumber from Little Falls to Bismarck which you have adopted in extending the merchandise rates adopted by the Commission and accepted by your Company from the Twin Cities to Bismarck, you would have this condition: If you base that upon the rate per ton per mile of the lumber rates in force from Puget Sound points to Bismarck, the rate from Little Falls to Bismarck would be 9 cents per hundred pounds; if you based it upon the Minnesota commodity rate law, taking the allowance made for the haul from Little Falls to Moorhead, that being upon the Bismarck line and the longest haul in Minnesota upon that line between Little Falls and Bismarck, you would have a rate of 25 cents per hundred pounds, and you do have, actually published, between Little Falls and Bismarck, a rate of 20 cents per hundred pounds?

A. That is our actual rate, yes, from Little Falls to Bismarck.

Q. This statement is correct, is it not, that I have made?

A. I couldn't answer that. I would like to have the question read again.

The question was read.

A. The rates on lumber from the Pacific coast to Bismarck were fixed by the Interstate Commerce Commission, and the rate was originally made on account of conditions which do not apply and did not apply with reference to the traffic han-

dled locally in Minnesota or North Dakota. It was made originally to load empty cars, which we had in great numbers on the Pacific coast, and it was very desirable to get some kind of a load in those cars coming East, and at that time 40 cents was considered the highest rate that could be obtained to enable the manufacturer on Puget Sound to sell his lumber in Minnesota in competition with the local manufacturers, the conditions surrounding the making of that rate were exceptional, and it was thought under the circumstances that the business could be handled at a 40-cent rate with a margin of profit rather than to handle the cars back East empty. Now, if we followed the same method of making rates on lumber east-bound as adopted by the Commission in the merchandise case and in the act of legislature, we would make our rates on lumber as shown in those charts and schedules, that is, using the same rate of progression as they have used; the result would be as indicated in those statements and charts.

Q. Well, you haven't answered my question, Mr. Baird. That can be answered yes or no. If my computation there is not correct, I would be glad to have you point it out. Of course it is on an assumption that I use and I am not asking you to commit yourself as to the propriety of the coast rates or the propriety of the Commission's schedule; I am asking you for a mathematical result based upon the assumptions which I have made.

The question was again read.

A. I don't believe I understand your question, Mr. O'Brien.

Q. Well, I will go over that again. We ascertained, yesterday, that after the Railroad and Warehouse Commission of the state of Minnesota made its order of September 6th, in controversy in this case, you changed the rates upon your road upon merchandise to Bismarck; is that true?

A. Yes, sir.

Q. And we found that in making that change the new

rate to Bismarck was 4½ cents per ton per mile upon merchandise of the first class, which was exactly or practically the rate allowed under the Commission's order for merchandise of the fist class for a haul of 250 miles, that being the distance from the Minnesota Transfer to Moorhead; is that true?

A. Yes, sir.

Q. Now, I say if that same method was adopted, we would have this condition: The rate per ton per mile for lumber in carload lots from Little Falls to Moorhead is practically one and a half cents?

A. That is right.

Q. If that rate was extended to Bismarck from Little Falls, the rate would be 25 cents per hundred pounds?

A. Yes, sir.

Q. The rate per ton per mile from Puget Sound points to Bismarck upon the Northern Pacific road is .53 of a cent per ton per mile?

A. Yes, sir.

Q. If that rate of .53 of a cent per ton per mile was applied to the distance between Little Falls and Bismarck, the rate would be 9 cents per hundred pounds?

A. Yes, sir.

Q. The rate actually in force upon your road is 20 cents per hundred pounds?

A. Yes, sir.

Recess until 2 P. M.

AFTERNOON SESSION.

Q. In your testimony yesterday we used, for the purpose of comparison, the rate to Bismarck, as changed to conform to the Commissioner's order; do you remember?

A. The rate from the coast to Bismarck, you mean?

Q. No, we yesterday ascertained that if the rate per ton per mile upon merchandise of the first class from St. Paul to Moorhead was applied to the distance from St. Paul to Bis-

marck, it would give the same rate which you actually did adopt for the purpose of making the Bismarck rates conform to the Commissioners' schedule?

A. That resulted in a rate of 98 cents per hundred pounds, first class, which was the rate which we made at Bismarck after the Commission's schedule was made effective.

Q. Yes. I understood you to say that that same condition would not apply to all the Dakota points to which the rates were changed after the order of the Commission.

A. As I recall my answer, I stated that I hadn't figured out the rates at the other points to ascertain whether that was a fact or not.

Q. I was going to ask you to do that for one or two points, for the purpose of ascertaining what the fact is regarding that. Take for instance, the rate to Valley City; the distance to Valley City is 287 miles, is it not?

A. It is 297 miles from Minneapolis, according to our distance table.

Q. That would take the rate for 300 miles.

A. 300 miles. yes, sir.

Q. Now at 4½ cents per ton per mile, what would that give as a rate per hundred pounds to Valley City?

A. 67½ cents.

Q. And what is the rate?

A. 70 cents.

Q. Is Valley City beyond Jamestown, on a branch, or—

A. No, it is on the main line east of Jamestown.

Q. And how is it situated with reference to Bismarck?

A. It is 137 miles east of Bismarck.

Q. Now, take Jamestown.

A. Jamestown is 332 miles, approximately; based on 335, if there is a five-mile jump there—no, we would take 340, because the spread is 10 miles when you get that distance; it takes 330 or 340.

Q. Will you please state what it would be?

A. Based on 340 miles, the rate would be 76½ cents; at the rate of 4½ cents per ton per mile.

Q. And what is the rate which you put into Jamestown for the purpose of conforming to the Commissioners' rate?

A. The rate that we published to Jamestown is 77 cents.

Q. Now, that rate and the 98-cent rate to Bismarck and the 70-cent rate to Valley City, are the new rates which you put in after November 15, 1906?

A. Yes, sir.

Q And after you had accepted the schedule for Minnesota fixed by the Commission?

A. Yes, sir.

Q. Are you able to say, Mr. Baird, whether or not the other roads in the state modified their merchandise rates to points outside of the state from the Twin Cities as you did?

A. No, I am not.

Q. You don't know what—

A. I don't know how they computed their rates beyond.

By Mr. How:

Q. I think you have testified, Mr. Baird, that the rate from the Head of the Lakes to the Twin Cities upon a ton of coal is 95 cents?

A. 90 cents on soft coal and $1.25 on hard coal.

Q. And what is the rate allowed by Chapter 232?

A. For 155 miles $1.20 on hard coal and 96 cents on soft coal.

Q. I want to call attention again to the fact that that is the distance tariff of the Commission and not a terminal tariff.

A. That is correct.

Q. What situation, in your judgment, would the Northern Pacific Railway Company be in if it were compelled, at the present time, to conform all its distance and terminal tariffs to the basis of the lowest competitive tariff which you now

have in existence and which you can maintain in existence without actual loss in the immediate haulage of the commodity covered by it?

A. The result of such application would be to put this low basis of rates in effect between points which are not governed by the competitive conditions which fix the rate between Duluth and St. Paul; and, as shown by the exhibits which we have presented, would have the effect of making, eventually, a corresponding basis of rates at other points on the line.

Q. Have you any general opinion as to what would be the result upon the finances of the Company if that course were pursued?

A. I believe that it would reduce the revenues of the Northern Pacific Railway to such an extent that, to my mind, there would be some question as to their ability to pay any dividends to their stockholders.

Q. What have you in mind as the lowest competitive rate that you now give for any commodity within this state—comparatively the lowest?

A. It is either the rate on soft coal from Duluth to the Twin Cities, or some of the lumber rates that were discussed this morning.

Q. Now, I ask you, if you put all your rates for merchandise and commodities—all your freight—down to a basis as low, comparatively, as those competitive rates now are, what, in your judgment, would be the effect upon the finances of the Company?

A. I believe that the result would be very disastrous to the finances of the Railway Company.

Q. Something has been said about the rate per ton per mile allowed for a haul, and a comparison has been made between the rate per ton per mile allowed in the state of Minnesota for a haul within the state, and the rate per ton per mile actually charged by your Company for long-haul business. The princi-

ple sought to be invoked is clear to me, but I desire to illustrate it a little further. Have you computed the rate per ton per mile allowed by the Commission for first class merchandise under its order of September 6, 1906, for a distance of five miles?

A. Yes, sir.

Q. Won't you state what it is?

A. The rate for five miles is 12 cents per hundred pounds, and the rate in cents per ton per mile is 48 cents; that is, the average rate is 48 cents per ton per mile.

Q. Have you computed what it is for ten miles? and if so state it.

A. For ten miles, the average rate would be 25.96 cents per ton per mile.

Q. And for 25 miles?

A. 12.74 cents per ton per mile.

Q. And for 50 miles?

A. 8.33 cents per ton per mile.

Q. And for 100 miles?

A. 6.12 cents per ton per mile.

Q. And for 150 miles?

A. 5.39 cents per ton per mile.

Q. And for 200 miles?

A. 5.02 cents per ton per mile.

Q. And for 240 miles?

A. 4.51 cents per ton per mile.

Q. And for 300 miles?

A. 4 cents per ton per mile.

Q. And for 400 miles?

A. 3.49 cents per ton per mile.

Q. 550 miles?

A. 2.99 cents per ton per mile.

Q. For 500 miles the rate fixed in the order of the Commission is approximately three cents per ton per mile?

A. For 500 miles.

Q. For five miles the rate fixed by the Commission is 48 cents per ton per mile. Is there any justification, in your judgment, and based upon your experience as a traffic man, in fixing a rate for five miles at sixteen times the rate per ton per mile of the rate fixed for 500 miles?

A. Yes, sir, there is.

Q. Won't you state what it is?

A. Because the original rate for five miles includes the terminal charge.

Q. No, I am excluding that and talking about the charge for hauling five miles and 500 miles.

A. The haulage charge should not be any greater for the longer distance, per mile, than it is for the shorter.

Q. In this case the shorter has, according to the theory, as I understand it, of counsel for the defendants, sixteen times as great a haulage charge per ton per mile as the longer distance?

A. Yes, sir.

Q. Is there any justification for that, in your opinion, and has there ever existed any case of the kind, in your experience, in which such a difference has been made, excluding terminal charges?

A. Well, I think your assumption, Mr. How, assumes that this table shows only the haulage charge, whereas it shows both the haulage and the terminal charge.

Q. That is the assumption upon which I ask the question; that is the assumption apparently of counsel for the other side.

A. The rate per ton per mile should decrease with the lengthening distance from five to 500 miles.

Q. Now, I ask you if you have ever known of a case, in your experience, in which there has been an increase sixteen-fold for the shorter distance per ton per mile over the longer dis-

tance per ton per mile.

A. Well, I could not answer that, directly, either yes or no; but if the rates on the decreasing rate per ton per mile are fair in this Commissioner's schedule, assuming that they are fair, then it is unfair to make a comparison between the rate per ton per mile for 240 miles with a rate per ton per mile for 500 or 1000 or 2000 miles. That is, the comparison was made, for instance, with the rate to Bismarck, and it is shown that our present Bismarck rate is on the basis of 4½ cents per ton per mile, that being the rate per ton per mile for 240 miles. That is manifestly an unfair adjustment of rates as compared with the Commissioners' schedule, because when they get beyond 240 miles, they make a gradual reduction in the rate per ton per mile. Now, the same might be said with reference to all of the other comparisons that have been made for greater distances than 240 miles.

Adjourned until Saturday, December 5th, at 10 o'clock.

FEDERAL BUILDING, St. Paul, Minn., Monday A. M., December 14, 1908.

Hearing resumed pursuant to adjournments from time to time by agreement of counsel from December 4, 1908.

McNEIL V. SEYMOUR,

sworn on behalf of Complainant, testified:

By Mr. How:

Q. Your name is McNeil V. Seymour, and you are and have been for many years an attorney at law, practicing in the city of St. Paul, Minn.?

A. That is so.

Q. You have been counsel, from time to time, in various matters for Mr. David C. Shepard, the Complainant in this action?

A. I have.

Q. I show you Complainant's Ex. 34—Elliott, and ask you if you have ever seen that before, and if so, under what circumstances, and when.

A. I have seen this telegram twice before.

Q. And under what circumstances did you first see it?

A. I first saw it on or about the time it bears date, I think the exact date it was received, when it was exhibited to me by Mr. D. C. Shepard.

Q. Do you know to what telegram Complainant's Ex. 34 purports to be an answer?

A. I do.

Q. I show you Complainant's Ex. 32—Elliott and ask you if that is the telegram to which Complainant's Ex. 34 purports to be an answer.

A. It is.

Q. Have you ever seen that telegram before, or a copy of it, or the original (if you have seen that) and if so under what circumstances?

A. I saw the original under these circumstances: on the 22nd day of April, 1907, at the request of D. C. Shepard, I transmitted the original telegram of which the exhibit you have showed me is a copy. The telegram was transmitted, a prepaid message, by the Western Union Telegraph Company, the original being deposited with that company at its general office in St. Paul, corner of Robert and Fourth streets.

Q. And that original telegram was dated on what day?

A. April 22, 1907.

Q. And the answer bears date on the 24th?

A. That is correct.

Q. Did you pay the charges for the transmission of the telegram?

A. I did.

CROSS-EXAMINATION.

By Mr. DURMENT:

Q. You were general counsel to Mr. Shepard for some years before the 22nd of April, 1907, were you not?

A. Yes, sir.

Q. Have you here the telegram, or a copy of the telegram, which you transmitted at his request on April 22nd?

A. I have.

Q. Did you prepare Ex. 32 for Mr. Shepard?

A. I think not.

Q. When you first saw it he brought it to you prepared, signed, and requested you to send it?

A. That is the way I remember it.

Q. You had not consulted with him before, with reference to the sending of such a telegram, had you?

A. I think that he told me he would send such a telegram. I remember that when he came into the office and suggested the transmission of that telegram, it was in line with our understanding, but I of course don't remember the details.

Q. Had that understanding been arrived at between you and him and others?

A. I do not think that I ever talked with anybody except Mr. Shepard with reference to this particular telegram.

Q. But Mr. Shepard took his advice as to this telegram, and as to his course with reference to the matter therein mentioned, from somebody other than you?

A. That is correct.

Q. Do you know from whom?

A. It would simply be hearsay.

Q. Well, that may be, but as long as we haven't anything, hearsay may be better for us than nothing—I don't know. That is, if you heard it from Mr. Shepard.

A. My recollection, on account of lapse of time, may not perhaps be strictly accurate, but I think the suggestion as to

the form of the telegram, he told me, came from Mr. Bunn, but about that I might be mistaken. I rather expected you would ask that question, and I have charged my memory with respect to it, but I am not positively sure.

Q. And by Mr. Bunn you mean the general counsel of the Northern Pacific Railway Company?

A. I do.

Q. Did he tell you with whom he had taken up the question of instituting the proceedings mentioned in the telegram and under whose advice he was doing it?

A. Well, Mr. Durment, I do not know that I could tell you that. The only recollection I have with respect to the sending of this telegram is that Mr. Shepard came into the office, he handed me the draft of the telegram, and he asked me to send it. I think there was very little conversation on the subject that day.

Q. Then, as I understand the situation, you were general counsel for Mr. D. C. Shepard, and had been for some years before that time, yet he never discussed with you the question of what action should be taken in this matter, or as to what telegram he should send, but he walks into your office, hands you a telegram which, as you remember, he says had been framed by C. W. Bunn, the attorney for the Northern Pacific Railway Company, and asked you to send it?

Mr. HOW: That is objected to as not stating the fact, and not stating the fact in accordance with the testimony of the witness.

Mr. DURMENT: I submit it is, and, if not, the witness can straighten it out.

The MASTER: You can answer it yes or no, I suppose?

A. I never was Mr. Shepard's counsel in this matter.

Q. No, but you can answer my question. You are a lawyer. You understand just what the question is.

Mr. HOW: I submit that it has not been testified to by Mr.

Seymour that Mr. Bunn framed the telegram.

Mr. DURMENT: No, I don't think I so stated in my question.

Mr. HOW: I think you did.

The question was read.

A. Well, as I say,—

Q. Now, then, is there any— You can answer that yes or no, can't you?

A. Well, I think there are some statements in there that are not quite correct.

The MASTER: How is that?

WITNESS: I think there are some statements in there that are not quite correct.

Q. Will you just please, then, indicate what particular statements in that question are incorrect and what particular ones are correct?

A. Yes.

Mr. HOW: I suggest that the question be written off for the assistance of the witness in that respect.

The MASTER: Well, if he doesn't understand—

Mr. HOW: He has made perhaps eight or ten statements in there, and now he asks the witness to say which of them is incorrect.

Mr. DURMENT: I have made about four: first, that he had been general counsel for Mr. Shepard some years; second, that Mr. Shepard hadn't discussed with him what course he should take with reference to this matter or the sending of the telegram; third, that he brings it into his office, states that the telegram had been prepared or framed by Mr. Bunn, and requests him to send it. Now those are the statements made in that question.

WITNESS: Well, I would put it this way, Mr. Durment: As indicated, I would hardly say that I was general counsel or attorney, at all, with respect to this particular litigation. I would also repeat what I think I said, that Mr. Shepard had

told me, in a general way, what the policy was likely to be, and that I was not surprised when he brought me the telegram, it was rather in line with what I expected; but I repeat what I have already said: I did not have any special talk with Mr. Shepard with respect to it; it was general, for the reason that I was not Mr. Shepard's attorney in this matter, and when he came in he asked me to send the telegram, not in the capacity of an attorney, but because it was inconvenient for him to send it and he would like to have me do it.

Q. Now, let us see. As I remember, you have testified—

A. And also, Mr. Durment, I did not say positively that this telegram, which I had our stenographer redraft, although it was a verbatim copy, was in Mr. Bunn's handwriting. I told you that, from my best impression, I would say it was, and still I might be entirely mistaken about that. Now, that is as near an answer as I can give to you.

Q. Now, outside of this particular litigation, you had been Mr. Shepard's general counsel for some years, at that time?

A. I think so, yes, sir.

Q. He had not, prior to the time he brought in that telegram, advised with you as to what course he should take in this litigation?

A. Not at all.

Q. Nor as to what sort of a telegram he should send?

A. Not at all.

Q. Had you had any talk with Mr. Shepard about this matter before he brought the telegram in?

A. Well, as I say, I am not positive, but I have an impression that he outlined to me in some of our talks—because he used to call at the office almost every day—I have an impression that he outlined to me in one of his talks that he would send such a telegram, and, as a consequence, as I have already stated, I was not surprised when he brought me the telegram.

Q. Had you, yourself, advised with Mr. Bunn, or any of the

officials of the Northern Pacific Railway Company, or attorneys of the Northern Pacific Railway Company, with reference to a course of this sort to be pursued by Mr. Shepard?

A. Not at all.

Q. Did Mr. Shepard, in those general talks, tell you at whose suggestion he was going to take this course?

A. Well, I do not definitely recall that; if he suggested any one, it was Mr. Bunn.

Q. Of the Northern Pacific?

A. But I am not sure about that. I can only testify with respect to that the same as I did with respect to the sending of the telegram. It is my impression that the telegram was framed in Mr. Bunn's handwriting, and still I am not positive; I am giving you my best recollection on the subject, and that may not be accurate.

Q. And it is also your impression, is it not, that this whole plan of action was devised by the Northern Pacific officers, at Mr. Bunn's office, and Mr. Shepard, at their request, took this course?

A. No, I never had any talk with them. All I know is that Mr. Shepard, in the various talks he had with me in the office, indicated to me that a telegram of this kind would, in all probability, be sent.

Q. And indicated to you, did he not, that it was at the suggestion of the Northern Pacific Railway Company officers, or Mr. Bunn, that it would be?

A. Well, if it was Mr. Bunn, he of course so stated when he handed me the telegram.

Q. Did Mr. Shepard tell you as to who would pay the expense of the litigation, or as to who was really standing back of the litigation?

A. He made this remark to me with respect to the telegram: "You send the telegram and prepay it; I suppose some day you will be indemnified," or words to that effect; he may not have

used that one word, but I received the impression that I would be paid at some time.

Q. He didn't say charge it to him—Mr. Shepard?

A. Mr. Shepard did not say to charge it to him.

Q. And Mr. Shepard himself did not indemnify you or reimburse you?

A. No—Mr. How.

Mr. HOW: Who did reimburse you?

WITNESS: Mr. How. Mr. How paid me the money. Mind you, this telegram was sent on the 22nd day of April, 1907, and in October, 1907, Mr. How sent me his check for the expense of the telegram,—$5.96, I see by looking at my book here.

Q. Well, did Mr. Shepard say to you, at that time, or at any time before or after the time he delivered you this telegram, who was to stand the expense of the litigation which he expected would follow that telegram?

A. I do not think he did, Mr. Durment. He may have done so, but I have no recollection on the subject.

Q. And if so, you don't know who it was?

A. No, I do not know who it was. The only inference that I could possibly draw would be from the remark that Mr. Shepard made, "I suppose somebody will pay for it."

Q. I suppose you have no knowledge or information as to the arrangements between Mr. Shepard and the Railroad people, if there were any, for the bringing of the action in which your testimony is now being taken?

A. I have not, Mr. Durment. I have told you practically all I know about the matter.

Q. You say "practically;" now, if there is anything else you know, we want it, Mr. Seymour.

A. Well, I say to you that I have told you all that I remember.

ALEX. M. CLELAND,
sworn on behalf of Complainant, testified:

By Mr. How:

Q. Your name is Alex. M. Cleland, and you live at St. Paul, Minn.?

A. I do.

Q. What is your present occupation?

A. I am General Passenger Agent of the Northern Pacific Railway Company.

Q. How long have you been in that position, Mr. Cleland?

A. Since April 15, 1904.

Q. What had previously been your experience in connection with the passenger department of the Northern Pacific Railway Company, previously to your assuming your present position?

A. Well, I went into the passenger department in 1892 in a clerical capacity, handling voucher work, ticket work, and was in that position until, I think it was the 1st of November, 1896; then I became chief clerk under Mr. Fee, who was then General Passenger Agent. I continued in that position until the middle of February (the 15th, I think it was) in 1901; then I was made Assistant General Passenger Agent, and continued in that position until I succeeded to my present position, in the middle of April, 1904.

Q. Of what do the duties of your present position consist?

A. Well, the duties of my position are broad and general in character; general supervision of all of the passenger department of the Northern Pacific System, all of the passenger work, and having to do with solicitation of passenger business, overseeing the outside force and general supervision of rates over the System.

Q. Have you in your department an accounting force?

A. We have not.

Q. Who does the accounting for the passenger department

of the Northern Pacific Company?

A. Well, it is done under the supervision, I think, of Mr. Gray.

Q. The Comptroller?

A. Yes, sir.

Q. That is the system, I understand it, of the Northern Pacific Company, that the books for all the departments are kept by the Comptroller?

A. Absolutely, yes sir.

Q. What were the duties of the former positions that you have held, beginning with that of chief clerk, and then through assistant passenger agent to your present position?

A. Well, my duties there were with respect to the general handling of passenger traffic; that is, in my position as chief clerk I handled sort of a special work, special party business, and things that were thrown to me by the Assistant General Passenger Agent; and in my position as Assistant General Passenger Agent the work was much the same except that it was extended a little beyond that.

Q. So that your former positions of Chief Clerk and Assistant Passenger Agent were somewhat the same as those you have now, excepting in a subordinate capacity?

A. Yes, sir, that is true.

Q. Is it, and has it been, necessary for you, in your various positions in the passenger department of the Northern Pacific Company, to familiarize yourself and to keep familiar with rates charged for transportation of passengers over the Northern Pacific System, whether or not that transportation originates on the Northern Pacific System or upon other roads and is continued over the Northern Pacific System?

A. It has been, Mr. How, one of my duties to keep a general supervision of rates of fare charged passengers, whether they originate and terminate on our line, or whether they originate off the line and terminate beyond.

Q. Or originate on your line and terminate off it?

A. Yes, sir; in fact, all passenger traffic moving over any portion of the System.

Q. Prior to the 1st day of May, 1907, which is the date of the taking effect of the two-cent passenger law, so-called, of the state of Minnesota, had there been any fixed basis of rates charged for transportation of passengers over the Northern Pacific System?

A. Yes, the general basis was three cents per mile.

Q. Was that basis universally employed for passenger transportation, or were departures made from it?

A. Well, that was the universal basis in the construction of what we term local fares. That was departed from to this extent: children of what we call the half-fare age, were charged half of that fare. That is, children twelve years of age and under, and five years and over—children under twelve, I should have said.

Q. Then there were some others—clergymen?

A. Then, we did, to ministers of the gospel or clergy, make half-rates; and, in some cases of charity, half-rates were made.

Q. Now that, you say, pertained to your local fares. How about your through transportation? Was that system employed, that basis employed, or were departures made from it?

A. Well, departures were made from that, Mr. How. Our coast fare from St. Paul, at that time, was arbitrarily made. The coast fare, I might say, Mr. Durment, at that time, was $50 from St. Paul to Portland. That fare resulted not from any fixed basis, but it was arbitrarily made when the fares locally were reduced to three cents per mile. We had in effect two fares to the North Pacific coast, one of $60 and one of $50; the reduction to three cents per mile—the combinations resulting from that, put the $60 rate out of existence, so to speak; then we adopted the $50 rate as the coast rate. That applies, generally speaking, or did apply to a series of points running

all the way from Vancouver to Portland; some of our points, as Seattle and Tacoma, were intermediate to other lines. Seattle and Tacoma on our line were intermediate to other lines; there was a sort of interweave out there that made it impossible for any one line, unless they were willing to maintain a different basis of fares, to avoid using the rate which we call, in that case, a blanket rate.

Q. Competitive conditions—

A. Competitive conditions.

Q. —caused that.

A. You might call it.

Q. Now, you had some mileage books outstanding prior to May 1, 1907, on a lower basis than three cents, did you not?

A. Yes, sir; two and a half cents per mile.

Q. And you also had some special fares?

A. We also had two-cents, I should say, too, Mr. How, prior to May 1, 1907.

Q. Two-cent mileage books?

A. Yes, sir.

Q. And you had some occasional special contracts, reduced fares, for certain particular occasions?

A. Yes; conventions, large meetings, and things of that kind, where it was thought that those should be made; but the tickets for those occasions were, I think, without exception sold under a special contract; that is, they were restrictive, as compared with any tickets that might have been sold at what we term our local fare; restrictive in character as to limits, stop-overs, and things of that sort.

Q. So that the contract involving a reduced fare was a special contract with certain defined limitations which did not appertain to the contract on your regular basis of three cents?

A. Yes, that is true.

Q. When was the basis of three cents per mile over the Northern Pacific System established?

A. Do you mean the entire System, Mr. How?

Q. Yes. State the several dates upon which it was established in the various localities. You can refer to your own memorandum for that.

A. I think I have that, but I am not sure,—yes. It was established in Minnesota and Wisconsin several years ago—I haven't the exact date here on that; but it was about 1887, I think, in Minnesota, and 1893 in Wisconsin. Then it was put in in North Dakota on April 1, 1900; in Oregon and Washington on July 1, 1900; in Idaho and Montana, February 1, 1901.

Q. And that completed the system February 1, 1901?

A. That completed the system, Mr. How.

Q. And has it remained in effect excepting as disturbed by special contracts and through rates, as you have explained, and unless interfered with by state legislation since that time?

A. It has, yes, sir.

Q. The two-cent passenger law, so-called, of the state of Minnesota, took effect, by its terms, May 1, 1907, and was put into effect by your Company, I think, upon that day?

A. Yes, sir that is right.

Q. When did the two-and-a-half-cent rate for passengers under the laws of the state of North Dakota, by its terms, take effect, and when was that put into effect by the Company?

A. It took effect on July 1, 1907, and was made effective on that day.

Q. Wisconsin, I think, has a two-cent passenger law; when did that take effect, and when was that installed by the Company?

A. It was effective and established simultaneously on August 1, 1907.

Q. At the time of the installing of the two-cent passenger law of the state of Minnesota, was any change made by your Company, or by your Company jointly with other companies, in the case of through transportation involving more than one

company, in any interstate passenger rates of your Company?

A. No, except at two or three points in Wisconsin that were intermediate between here and Duluth. They were in the tariff, and as the tariff was published, it was a necessity, practically, and we would have made it effective, perhaps, further, but it was physically impossible because we had such short notice. If I recollect correctly, we had only—in fact we had to work day and night to get the Minnesota tariff in, if I recollect correctly.

Q. It takes thirty days for you to install a tariff under the provisions of the Interstate Commerce Commission's law, I think?

A. Generally speaking, yes, sir.

Q. What was the effect upon the business of your Company, of the maintaining of the former passenger rates for your interstate business and the installing and maintaining, at the same time, of the two-cent rate in Minnesota? Have you prepared a statement, or several statements, showing that effect?

A. Yes, I have, Mr. How.

Q. Produce them, please.

Witness produces statement.

Q. The first statement produced by you has been marked "Complainant's Ex. 49—Cleland." It purports to be a statement of passenger revenues in Minnesota and on the whole road for the months of April, May and June, 1907 and 1908, compared with the corresponding months of 1906. I show you that statement and ask if you will explain to the Court what it means and what effect you claim it shows upon the business of your Company of the maintaining of the former rates for interstate transportation and of the two-cent law in Minnesota simultaneously.

A. I will try and make it clear: The first figures shown are to and from Moorhead. That means all of our passenger business to and from Moorhead, Moorhead being on the dividing

line, in Minnesota, between Minnesota and North Dakota. You will note that, in the month of April, 1906, our passenger traffic to and from Moorhead amounted to $2,277.70; in April of 1907, $2,434.52; or an increase of $156.82, which is 6.9 per cent increase. Now, if you go right over, you will see that, in 1908, there was an increase, a little greater percentage, perhaps, than that in 1907, but not a sufficient increase to cause any material comment, either one way or the other. Well now, you take the month of May—

Q. In fact, that increase compares very closely with the increase of the whole road for the month of April, 1908, over 1907?

A. Yes.

Q. One being 24.1 and the other 24.4?

A. Yes, sir.

Q. Just the normal increase for the System. Now proceed, please.

A. Now, you take the month of May, the business in May was not quite so big as it was in April, 1906. I speak of May, 1906, also. Then take May, 1907, which was the first month in which the Minnesota two-cent fare became effective, you see the business jumped right up to pretty nearly $16,000, the exact figures being $15,839.48, or an increase over May, 1906, of $13,718.96, or 647 per cent. Now, then, following that line right across, we find that in May, 1908, the total business to and from Moorhead was getting back toward normal, and it amounted to $3,049.22, an increase over 1906 of 43.8 per cent

Q. We shall get to that later, but I will ask you now if between the first of May, 1907, and the first of May, 1908, you had installed a two-cent passenger rate for your interstate business between here and North Dakota.

A. We had, Mr. How.

The MASTER: And after the month of May, 1907?

Mr. HOW: Yes, between the 1st of May, 1907, and the 1st of

May, 1908.

The MASTER: And after the month of May was it? That is, it did not apply to the month of May, 1907?

Mr. HOW: It did not.

WITNESS: No, sir.

Mr. HOW: In the month of May, 1907, the two-cent passenger law was in force in Minnesota, but not for the interstate business. Subsequently to that and before the 1st of May, 1908, they had installed the two-cent passenger business for interstate transportation between Minnesota and North Dakota, which put aside the possibility of anybody saving money by making themselves local passengers instead of interstate.

Q. Now proceed, Mr. Cleland.

A. Then you take the month of June, 1906, the Moorhead business was $3,241.02; and yet in 1907 it was $24,230.40, or an increase of $20,989.38, an increase of 647.6 per cent. Then you will note that in 1908 the passenger traffic got back to somewhere near normal and was $4,674.41, or an increase of $1,433.39. The percentage increase is 44.2 per cent. That is 1908 over 1906, not 1908 over 1907. Now, you go on to the next statement, the next batch of figures, and you will note that our local business in Minnesota during the month of April, 1906, amounted to $77,143.58; for April, 1907, it amounted to $80,389.25, an increase of $3,245.67, or 4.2 per cent. In 1908, the month of April, the Minnesota business amounted to $76,332.74, or a decrease of $810.84, or 1.1 per cent. Now, in the month of May, 1906, our business was $73,724.71; then it jumped up, in 1907, to $86,014.69, an increase of $12,289.98, or 16.7 per cent. Then, in 1908, it went back to more normal conditions, and amounted to $79,120.32, being an increase over 1906 of $5,395.61, or 7.3 per cent. I would like to call attention there to the fact that the increase over the entire line during the month of May, 1908, over 1906, was 23.8 per cent, as compared with an increase of 7.3 per cent only in Minnesota.

Q. And in April the increase was 24.1 per cent as against a decrease of 1.1 per cent in the state of Minnesota?

A. That is right. Then take the month of June, the total Minnesota business amounted to $100,091.70; in 1907 it amounted to $123,278.02, an increase of $23,186.32, or 23.2 per cent. Now, then, you go on to 1908, the month of June, and that shows a total business of $97,112.64, or a decrease of $2,979.06, a three-per-cent decrease. That shows a decrease, and so does the statement covering the entire line for the month of June; but I would like to say, in this connection, that the month of June for us over the entire System was a very disastrous one, in that we had, you recollect, I think, water troubles out in Montana; we were out of business, if I recollect correctly, for about twenty-four days in Montana, something like twenty days in which we didn't have a through train, and that is why the decrease shows for the entire line. Under normal conditions, we could have taken the business; we had to turn the business right away from us at St. Paul.

Q. Turn through business away?

A. Yes, sir.

Q. It of course didn't affect business in the state of Minnesota?

A. Not in the state of Minnesota, no, sir, except that it might have been affected by reason of our trains having been discontinued, one or two of our transcontinental trains, that we couldn't get through, and we took off and let another train take care of it; in other words, we let two or three trains serve what one train served.

Q. Now, perhaps we need not go through the third set of figures here, headed "Local to the State of Minnesota, eliminating Moorhead business." The purpose of that is, of course, apparent, and is to contrast the to-and-from Moorhead business with the local-to-the-state-of-Minnesota including the Moorhead business, and perhaps we need not go through, also, with this

set of figures headed "Whole Road." If I understand the purport of Complainant's Ex. 49, which is the one you have just been exhibiting, what you claim that shows is that the installing of the two-cent rate in Minnesota and the keeping of your former rates for interstate business, three cents for your tariffs between Minnesota and North Dakota and for points beyond, excepting as regulated by competitive conditions on through business, resulted in passengers making themselves local passengers, and wherever they came from or wherever they went, if St. Paul or Minneapolis was their point of origin or destination, they made themselves into local passengers in the state in order to avail themselves of the two-cent fare?

A. That is right.

Q. And it deprived you of your interstate passengers and made local passengers out of them?

A. That is very largely true.

Q. And that you claim is shown by this enormous, unprecedented and temporary increase in the traffic between Moorhead and points in Minnesota?

A. Yes.

Q. You have produced a second statement, which you claim tends to show the effect upon your business of the installation and maintaining of the two-cent rate in Minnesota and the simultaneous maintaining of your three-cent rate for interstate business. It has been marked "Complainant's Ex. 50—Cleland." Will you not explain that statement, and show to the Court how you claim that has a bearing in showing the effect upon your business?

A. Do you want me to read it all, Mr. How?

Q. I would like to have you. Yes, explain it fully.

A. Well, I presume the best way to do would be to go right across, just the same as I did with the other one.

Q. Yes. Let me say, first, it is entitled—

A. It is entitled "Comparative Statement of Ticket Sales

between St. Paul and Minneapolis and Moorhead, Fargo, East Grand Forks and Grand Forks for June, 1906, 1907 and 1908." Now, I direct your attention to the fact that in the month of June (during the month for which this statement has been prepared) there were sold from St. Paul to Moorhead, thirteen full and three half one-way tickets, six full and one half round-trip tickets, during the month of June.

Q. During the month of June, 1907?

A. During the month of June, 1907, there were sold 770 full tickets and 19 half, one-way tickets, five full round-trip tickets. Then in June, 1908, after our interstate fares had been established—

Q. On the same basis?

A. On the same basis as the intrastate fares, there were 60 one-way tickets sold. The next line, "From St. Paul to Fargo," in 1906, there were 162 full and 22 half tickets sold (one-way tickets) St. Paul to Fargo, and 13 full and one half round-trip tickets; between St. Paul and Fargo in June, 1907, the month in which the interstate fares had not been adjusted we sold only 15 full and 14 half one-way tickets, and only one round trip—one full and one half round-trip ticket. Then in the month of June, 1908, after the fares had been re-adjusted to the new basis we sold 395 full and 7 half one-way tickets and 2 full round-trip tickets. The next line reads, "From St. Paul to East Grand Forks." That is on the boundary line, just across the Red river from Grand Forks, North Dakota.

Q. And is in Minnesota?

A. And is in Minnesota. Now, you will see that in June, 1906, we sold only 1 full ticket from St. Paul to East Grand Forks; the business to that place does not amount to a great deal. We sold 12 full and 2 half round-trip tickets. But in the month of June, 1907, (prior to the time that our fares had been adjusted) we sold 84 full and 1 half, one-way ticket, and 1 full round-trip ticket. Then you will see when we get to 1908,

after the adjustment of the fare, that we sold 2 full and 2 half one-way tickets, no round-trip tickets. St. Paul to Grand Forks, (Grand Forks being just across the river from East Grand Forks, and Grand Forks being in the state of North Dakota,) during the month of June, 1906, we sold 12 full and 2 half one-way tickets, no round-trip tickets. During the month of June, 1907, we sold 2 full and 1 half one-way tickets. That was prior to the re-adjustment of the fares. Then in June, 1908, again after the fares had been re-adjusted, we sold 14 full and 1 half one-way ticket, and 4 full round-trip tickets. Then the statement goes on and shows the same basis from Minneapolis to Moorhead, Fargo and East Grand Forks. Do you want me to read all of them?

Q. I would like to have you read from Minneapolis to Moorhead and from Moorhead to St. Paul, and Moorhead to Minneapolis, into the record, and the rest of the statement perhaps it is not necessary to read; but those figures are so glaringly different that I should like you to read them: Minneapolis to Moorhead, Minneapolis to Fargo, Moorhead to St. Paul, and Fargo to St. Paul, that is all.

A. This statement further shows that in June, 1906, from Minneapolis to Moorhead there were 20 full and 3 half one-way tickets sold, and 4 full round-trip tickets sold. Now, in the month of June, 1907, before the interstate rates had been made effective, there were sold 957 full and 9 half one-way tickets. Now, in June, 1908, after the fares had been readjusted or adjusted to the new basis, there were sold 87 full and 1 half one-way tickets, no round-trip. From Minneapolis to Fargo, in June, 1906, there were sold 236 full and 14 half one-way tickets, 24 full round-trip tickets. Now, in the month of June, 1907, when the Minnesota fare was not applicable in connection with the business to and from Fargo, there were sold only 7 full and 47 half tickets; in the month of June, 1908, after the adjustment of the fares, there were sold 598 full, 1 half one-way ticket,

and 2 full round-trip tickets.

Q. I think perhaps that is all that I shall ask you to read. An examination of the statement will disclose the rest of the effect. Now, Mr. Cleland, will you state what, in your opinion, was the cause of that large variation of tickets, sold between those various points, between 1906 and 1907 on one side and 1907 and 1908 on the other side?

A. Well, the cause was the establishment of the two-cent fare in Minnesota and made such a discrepancy as between the fares from St. Paul that could be obtained by purchase of tickets to Moorhead, if you please, on one hand, or East Grand Forks, on the other, and then the re-purchase of tickets or payment of cash fares beyond, that passengers availed themselves of the privilege that they thus obtained; that is, of the opportunity thus offered, the difference being quite material.

Q. And changed themselves from interstate passengers, to and from St. Paul and Minneapolis, to perhaps interstate passengers to and from Moorhead, and then local passengers to and from St. Paul and Minneapolis?

A. Yes, it had that effect, Mr. How.

Q. I show you a third statement, which has been marked "Complainant's Ex. 51—Cleland," and I will ask you if you will explain that and state how and why you claim that that shows an effect upon your business of the installation and maintaining of the two-cent rate in Minnesota and the simultaneous maintaining of the three-cent rate for interstate business out of Minnesota or into Minnesota.

A. Well, this statement is really supplementary to the one I just read, Mr. How. It shows the cash fares instead of the ticket sales. Do you want me to read this all, or just read the totals?

Q. Just read the totals.

A. This statement purports to show a comparison of cash fares, train collections, St. Paul and Minneapolis to Moorhead,

and Moorhead to St. Paul and Minneapolis, in March, April, May and June, 1906, 1907 and 1908. The total cash fares collected on our trains and reported by the conductors during the four months named in 1906, were three full and three half St. Paul to Moorhead; not any Moorhead to St. Paul, Moorhead to Minneapolis, Minneapolis to Moorhead, or Moorhead to Minneapolis. Now, take the four same months in 1907, during May and June of which year we had the two-cent rate in Minnesota but not in the adjoining state, the totals of St. Paul to Moorhead were 21 full and 24 half fares; Moorhead to St. Paul 530 full and 31 half; Minneapolis to Moorhead 16 full and 11 half; Moorhead to Minneapolis 603 full and 17 half.

Q. Now, all but three of these totals which you have last read were in the months of May and June, 1907, during which the two-cent fare was in force in Minnesota and the three-cent fare for interstate points out of or into Minnesota?

A. That is true; all of the fares, as shown by the figures which I read, with the exception of 2 full and 1 half cash fare.

Q. Now, coming along to 1908—

A. I might explain, for the benefit of others, that the very large number of cash fares shown from Moorhead to St. Paul and Moorhead to Minneapolis, results from, of course, people coming into Fargo or Moorhead and paying cash right on the train; they buy their tickets to the state line, and then go on.

Q. Now, coming to 1908.

A. 1908 the totals for the four months of 1908 were 8 full St. Paul to Moorhead, 5 full fares Moorhead to St. Paul, 2 full and 2 half fares Minneapolis to Moorhead, and 6 full fares Moorhead to Minneapolis. That was after the interstate fares in and out of the adjoining states had been readjusted.

Q. Has any change been made in the rates for passenger transportation over the Northern Pacific System other than such as is local to the state of Minnesota under its two-cent law, to the state of Wisconsin under its two-cent law, or to the

state of North Dakota under its two-and-one-half-cent law, since May 1, 1907?

A. Yes, we have made a very general change in our interstate fares.

Q. What is the nature of that change?

A. A reduction.

Q. And to what extent? You say it has been a general change over the System?

A. Yes, sir, it has affected all of our fares, right through from St. Paul, from the eastern termini to the western termini.

Q. What is the cause of that change?

A. The reduction in the local fares in the three states named.

Q. Now, I think I did not ask you, but what was the cause of the installation of the three-cent basis over the System on and prior to February 1, 1901?

A. I was not in an official capacity at the time, but the three-cent basis, as I recollect it, was established arbitrarily under the direction of Mr. Mellen, who was then President of the Northern Pacific Railway Company.

Q. It was not compelled by any state legislation?

A. No, sir.

Q. Or any Interstate Commerce Commission?

A. No, sir, it was voluntary.

Q. When did the necessity for a reduction in the rates for interstate traffic over your road of passengers first begin to make itself manifest?

A. Almost immediately; I knew, within two or three days, of the conditions which existed at Moorhead and of the conditions which existed out of St. Paul and Minneapolis, as shown by these statements which I have just read.

Q. Have you prepared statements showing some of the changes in rates which you speak of as having been made as a result of these various state laws?

A. Well, I have made up some figures here, Mr. How.

Q. It has been produced and marked "Complainant's Ex. No. 52—Cleland." It has five columns of figures, and a list of stations which are destinations or points of origin in transportation between them and St. Paul, and Duluth on the other hand, respectively; that is, these fares go either way, I take it?

A. Yes, sir.

Q. Now, will you explain that statement and detail what it means?

A. I took points of origin, St. Paul and Duluth, because to many points, practically all points in North Dakota, the fare from Duluth is exactly the same as it is from St. Paul (that is, Duluth across the straight line by way of Staples). It shows that prior to July 1, 1907, our local fare between St. Paul and Duluth and Fargo, in both directions, was $7.28. In re-adjusting the fares on the Minnesota basis, as a foundation, that fare reduced itself to $4.90, or a reduction of $2.38; all of which you might say resulted from the Minnesota two-cent law. You take the example—

Q. Well, take Dickinson.

A. Well, take Dickinson; Dickinson, prior to July 1st, was $16.45; by reason of the rate reductions in Minnesota and North Dakota, that fare reduced itself to $12.65, or a loss of $3.80, as we look at it, $2.38 of which resulted from the loss in Minnesota and $1.42 resulted from the loss in North Dakota.

Q. Then, the column headed "Old Rate" shows the rates for passenger transportation between St. Paul and Duluth, at one end, and these respective towns in the column at the other, in which the direction of transportation ran as existing on your System prior to the change, which you say was made necessary by the enactment of these state laws?

A. Yes, sir.

Q. The second column shows the changes which you made, as you say, on account of the taking effect of those respective

state laws?

A. Yes, as a result of those laws.

Q. The third column shows the amount of difference in the charge made by the Northern Pacific under the old conditions and under the new, as affected by the state laws?

A. Yes.

Q. The fourth column shows the amount of that difference which you attribute to the mileage in Minnesota on account of its two-cent law?

A. That is right.

Q. The fifth column shows the amount of that difference which you attribute to North Dakota on account of its two-and-one-half-cent law?

A. Yes; and I might say in that connection, and because of these very varying amounts, I would like to say, for the benefit of the Master, that the varying amounts shown in North Dakota result from our fares being to all points west of Fargo; Fargo is used as a basis, so that whatever loss we sustain primarily between St. Paul and Fargo is properly chargeable to the Fargo rate. That is why I wanted to show why the charge was uniformly $2.38 in Minnesota.

Q. Fargo is the basing point?

A. Fargo is the basing point for west; I think I could say that for practically every station on our main line, Fargo is used as the basis, and then the local fare from Fargo to the destination in North Dakota is added to the St. Paul-Fargo rate in order to arrive at the fare between St. Paul and Beech. There may be one or two exceptions, by reason of the short-line mileage or competitive conditions, but generally speaking that is the basis.

Q. Now, you have used 14 different stations, all situated, I think, in North Dakota; are they all situated in North Dakota?

A. Yes, sir, all of these are destinations in North Dakota.

Q. Does this statement, Complainant's Ex. 52—Cleland, purport to show all the changes which were made between St. Paul and Duluth and stations west, or are they merely examples of a general change, and fair examples of the amount and nature and extent of that change?

A. Oh, they are just you might say ten or twelve examples of several hundred that might have been made.

Q. The change, the reduction, then, was general over your System?

A. Yes, sir.

Q. Another statement produced by you has been marked "Complainant's Ex. No. 53—Cleland;" it purports to be a statement showing changes in through passenger fares caused by state laws limiting fares locally with the amount of reduction suffered by the Northern Pacific Company, the present fares being shown in black, which is the lower line of each series of two lines of figures, and the fares in effect prior to May 1, 1907, are the old fares prior to the reduction, being shown in red, which is the upper line of each series. Now, will you explain to the Master just what that statement means and what the various abbreviations in the statement indicate?

A. Well, the first abbreviation is the "E—Ch." Those are shown very clearly, "east of Chicago." "Ch.—St. P." "between Chicago and St. Paul," and "W. St. P.," "west of St Paul." I prepared it in that way so that the divisions of the fare could be shown. Take the first fare, prior to the date on which these changes were made, the fare from New York to Fargo was $38.50. Now, that fare was made up of the fare from New York to Chicago of $20, Chicago to St. Paul of $11.50, and St. Paul to Fargo of $7. Then you see that fare reduced itself to $32.65 by reason of the changes that had been made in the various states, all of which resulted in a reduction; no reduction between New York and Chicago. Between Chicago and St. Paul there was a reduction of $3.50; the fare reduced itself

from $11.50 to $8. Our division or proportion of the through New York-Fargo fare reduced itself from $7 to $4.65. You might ask why we didn't get $4.90. I would say, in explanation of that, that the basis for construction of Fargo fares was established years and years ago by one of our competitors, and in the construction of the through fare, they used the Fargo basis. That is practically the only point west of St. Paul where the Minneapolis basis is used.

Q. Used the Fargo basis?

A. Used the Minneapolis rate. That is why this proportion is shown as $7, the New York rate clerks, perhaps, in the construction of their tariffs, said, "We will take $7 instead of $6.98," making it an even figure.

Q. I observe that the left column shows the rates between New York on the one hand, and Fargo and Bismarck, (North Dakota,) Billings, Helena, Butte and Missoula, (Montana,) Spokane, Seattle and Tacoma, (Washington,) and Portland, (Oregon) on the other hand; that in each case the rates retained by the lines east of Chicago are the same now that they were before; that in each case there is retained by the lines between Chicago and St. Paul $8 now instead of $11.50 as before; and that the comparative amount retained by the Northern Pacific Company varies in each case, there being a loss to the Northern Pacific of $2.35 in the fare between New York and Fargo and of only $1.10 in the fare between Seattle, Tacoma and Portland.

A. That is right.

Q. Now, will you explain the difference, or the reason why the Northern Pacific loses only $1.10 in the fare from Seattle, Tacoma, Washington, and Portland, Oregon, and $2.35 in the fares to Fargo on this joint-rate-through-ticket arrangement?

A. Well, that is easily explained by the fact, as I said awhile ago, the local fare from St. Paul to the Northern Pacific coast points, at the time our fares generally were reduced from

above 3 to 3 cents per mile, was arbitrarily fixed at $50, that fare having been in effect as a limited fare between St. Paul and Northern Pacific coast points; and when the re-adjustment came, the competitive conditions were such that it was deemed wise not to change, so that in the re-adjustment of our fares the same difference does not exist all the way through.

Q. Have you competitors for such business as you join in from Chicago to the Pacific coast?

A. Yes, sir, we have.

Q. Who are those competitors, or what are they, at least?

A. You might say all of the transcontinental lines; the Canadian Pacific, in connection with the Soo, from St. Paul; the Canadian Pacific from Winnipeg; the Great Northern from St. Paul; the Union Pacific and its connections from Omaha; the Burlington and its connections from Denver; the Rock Island and its connections from Denver and Salt Lake; the Santa Fe and its connections from Kansas City, through Denver, Salt Lake and Ogden, from Pueblo.

Q. And the Union Pacific?

A. Yes, I mentioned that. Practically all lines which have what we call gateways through Colorado Springs, Denver and Pueblo, and anybody with whom we compete up here or direct from the Missouri river.

Q. Do they get to Portland?

A. Yes, sir.

Q. And to Seattle?

A. Yes, sir.

Q. And to Tacoma?

A. Yes, sir.

Q. And Spokane?

A. Yes, sir; the lines I have named, in connection with their connections.

Q. Now, this statement, Complainant's Ex. 53—Cleland, shows the rates between New York, Philadelphia, Detroit, Tol-

edo and Chicago, in the East, and these various western localities upon your line, as they existed prior to the installation of the respective two-cent laws and two-and-one-half-cent laws of the states, and as they have been changed and now exist?

A. That is right, yes, sir.

Q. Are these localities, either in the East or the West, selected by you merely as examples, or do they represent the only localities between which changes have been made by you?

A. Oh, no, they are merely examples.

Q. How general has the change been from eastern to western points upon your System?

A. It has been pretty nearly universal; very few points that were not affected. I would like to explain one of these in here, if I may.

Q. Yes, do.

A. To someone who does not understand it, it might cause some query, and that is, take the fare from New York to Missoula, if you please. That is the sixth destination shown. You will note that there is a difference there of only $1.55 to the Northern Pacific Railway. Well, that comes form this: Prior to the rate reductions that carried as a foundation through as far as Drummond, (you know Drummond is just west of Garrison,) the fare which we describe as the Montana common-point fare, is the same fare that applies to Helena and Butte; but, after the change was made, that basis was departed from, and the fare to Missoula was made, you might say, locally over Helena. Now, the making of the rate of Drummond as a basis was not of our volition, that was forced upon us by the action of the Missouri-river-Montana lines, the Union Pacific and its connection the Oregon Short-line.

Q. By competition?

A. By competition with that line. Competitive conditions forced that basis into Missoula.

Q. Now, what, in your judgment, based upon your experi-

ence, Mr. Cleland, not only in this particular matter of the two-cent law of the state of Minnesota, but also in connection with other reductions, would be the effect upon the interstate business of the Northern Pacific Company, if all the states through which it passes should enact and enforce two-cent passenger laws?

A. Well, it would have the effect, Mr. How, of still further and seriously reducing our interstate fares.

Q. To what basis do you think?

A. To what basis?

Q. Yes, would they have to be reduced?

A. Well, they would have to be reduced, our fares would be. You mean our own fares?

Q. Yes, I mean if all the states through which you go should enact and enforce two-cent laws, what would be the result upon your interstate fares between those states?

A. So far as we are concerned, it would pull us down to a very low basis, because one of the lines will have a very short mileage when it is completed, and we must necessarily meet their fares; it will pull us down to about $35 to the coast.

Q. Will pull you down to a maximum of two cents?

A. Yes, sir.

Q. And less, under competitive conditions?

A. Yes, sir.

Q. The state of Minnesota now has a two-cent passenger law, and you have a two-cent passenger rate in obedience to that law; the state of North Dakota has a two-and-a-half-cent passenger law and you have a two-and-a-half-cent rate in North Dakota in obedience to it; you have a three-cent rate in Montana and beyond. In case Montana, Idaho, Washington and Oregon should each enact and enforce a 2-cent passenger law, what, in your judgment, if any, would be the effect upon your present rates between points in Montana and Washington and points in Montana and Idaho, Idaho and Washington, and so on,

interstate traffic between any two of the western states named?

A. I presume the general answer to that would be that the local fares would necessarily be reduced.

Q. The interstate fares?

A. The interstate fares, as well as the intrastate fares. The interstate fares must necessarily come down.

Q. Do you consider it practicable to charge and obtain, for interstate traffic, more than the sum of the locals established by states through which the interstate traffic runs?

A. I do not; it is not only impracticable but it is impossible, I believe, of accomplishment.

Q. So that, if each state should enact 2-cent laws, you think that you could not charge or obtain more for through traffic than the sum of the locals?

A. No, sir; we have demonstrated that.

Q. And competitive conditions, you think, would bring you to even less?

A. Yes, sir.

Q. Let us suppose that each of the states through which your road runs should enact and enforce 2-cent laws that would bring down your through rates, what effect, if any, in your judgment, and based upon your experience, would that condition of affairs have upon rates charged by the Union Pacific Road, for instance?

A. Well, the Union Pacific Road adopts or applies, from Omaha to points common with the Northern Pacific, the same fares, in dollars and cents. Understand me, not the same basis, but the same fares, in dollars and cents, that we apply from St. Paul. They do the same thing from Kansas City. Whatever the fare is from Omaha, that is the fare from Kansas City; whatever the fare is from St. Paul, that is the fare from Omaha and Kansas City. Necessarily, a reduction from St. Paul would affect every rate that might (as we call it) base on St. Paul. The extent would be universal almost throughout all of the

territory east of St. Paul and east of what we call Missouri river common points.

Q. West, you mean?

A. West, yes.

Q. West instead of east?

A. Yes, west. That is, west and including Omaha, St. Jo, Leavenworth and Atchison. There are a lot of towns down there that, in railroad parlance, we call Missouri river common points—Omaha, Council Bluffs, Pacific Junction, Plattsmouth.

Q. If all states through which the Union Pacific system runs should install and enforce 2-cent passenger laws, and the states through which the Northern Pacific runs should refrain, what effect would the 2-cent passenger laws upon the Union Pacific have upon the Northern Pacific rates?

A. In my judgment, it would be about the same as I just described in the opposite direction, the opposite way.

Q. And for the same reason?

A. For the same reason.

Q. Competitive conditions would force like rates on the Northern Pacific?

A. Yes, sir.

Q. I think that is all unless you think of something I have overlooked.

A. I don't think of anything just now.

Mr. HOW: I offer all of these exhibits, severally.

WITNESS: I have tried to make the statements very clear.

A recess was here taken until 2 o'clock, P. M., to meet at Mr. Cleland's office in the Northern Pacific general office building.

AFTERNOON SESSION.

CROSS-EXAMINATION.

By Mr. DURMENT:

Q. Mr. Cleland, I believe you said that when you were chief clerk and assistant general passenger agent, you had special charge of special-party business?

A. Yes, sir; it is business that moves in special trains, such as theatrical business, theatrical companies. That was only an incident, however.

Q. And that was usually at a special rate?

A. No, sir, not necessarily, at all. Invariably not.

Q. Invariably it was not?

A. Invariably it was not a special rate. The theatrical business we handled at regular fares; the theatrical end of it constituted a very large percentage of it.

Q. Who had charge of the other, such as excursions and special rates?

A. Well, I knew of it in a general way. I presume you mean the fares that we put in, all special fares, all fares that might be referred to as special fares less than our maximum fares or normal fares.

Q. Well, during all the years prior to May 1, 1907, there were frequently special rates put in, for various reasons, were there not, by the Northern Pacific?

A. You could hardly say frequently, you could say occasionally.

Q. Well, it was done from time to time?

A. It was done from time to time, yes, sir.

Q. And those special rates were frequently a fare and a half, were they not?

A. Almost invariably one-and-a-third fare.

Q. And there were a good many instances where they were even less than that, weren't there?

A. Yes, for large volumes of travel, like the Minnesota state fair, we used a one-fare basis.

Mr. HOW: One fare for the round trip?

WITNESS: One fare for the round trip.

Q. And my recollection is I have seen advertised, where there would be large gatherings, one fare plus $2, for instance.

A. Yes, sir.

Q. I have not found, in the reports made to the State of Minnesota by the Northern Pacific road—nor any road, for that matter,—that there was any separate track kept or report made of the receipts from these special fares.

A. No, I think not.

Q. They were all included in the total number of passengers carried and the total amount received from passengers?

A. So far as I know, they were.

Q. It was also true, was it not, that in making your reports to the State, in the case of the Northern Pacific, these half fares that you spoke of this morning to the clergy and to children and, sometimes for reasons of charity, were included in this general report of the number of passengers carried and the total amount received?

A. I couldn't say as to that.

Q. You don't know whether any separate report was made of those or not?

A. I don't think I ever have seen one of those reports.

Q. Do you know whether your Road kept, prior to the 1st of May, 1907, any record which shows the number of passengers carried at half fare?

A. No, sir; so far as I know they did not. So far as I know no railroad keeps that; I have never known of one having kept a record of that kind.

Q. It was always true, at least it was commonly supposed to be true, prior to the 1st of May, 1907, that there were a good many people who, for one reason and another, were carried without fare; that is, carried on passes and the like, and I suppose there were some of that class carried during the years prior to May 1, 1907?

A. I have seen them on the train. I had nothing to do with the issuance of passes, so I don't know to what extent that was done.

Q. And do you know whether your Road, during any of the

years prior to May 1, 1907, kept any record here from which it could tell how many in any one year it carried free, or what distances it carried them, so they could tell what would have been the revenue derived from carrying those passengers if they had paid at the usual rate?

A. I don't think they have any such figures, Mr. Durment, and if they did have, the figures would be of no value. I will tell you why, if I may. A great many people—I won't say a great many, but I have three or four personal acquaintances to whom transportation had been issued for one reason or another, they might live at Wadena, we will say, simply for example; now, with that transportation in their pocket they came to St. Paul frequently; without that transportation they came once or twice a year; so that any statement of that kind you might get would not, in my judgment, be of any value to you.

Q. But, so far as you know, no record of that was kept?

A. No, sir.

Q. And I suppose there are some passengers, even now, carried free?

A. The excepted classes.

Q. I suppose no record is kept by the Northern Pacific Railway Company of the number of persons who travel and the distances they travel without paying, since May 1, 1907?

A. Well, I couldn't say definitely as to that, because I don't keep the records, but I think not.

Q. If I understood you right, the three-cent-a-mile rate for local traffic was put into effect in Minnesota before it was in any of the other states you mentioned this morning?

A. Yes, sir, it was.

Q. That was in 1887?

A. Yes, sir.

Q. Do you know what, relatively, was the density of the local traffic in Minnesota as compared with the other states at

that time?

A. No, sir; I was not at that time connected with the Company—

Q. And you have not examined it since?

A. Not connected with the Company in a capacity where a question of that kind might come up for some eighteen years thereafter, and then it would be very difficult to arrive at anything; even if you would dig up a multitude of figures, they would not be satisfactory.

Q. It seems, then, that the three-cent rate was put into effect in Wisconsin in 1893; in North Dakota on April 1, 1900—

A. Yes, that is right.

Q. —Oregon and Washington on July 1, 1900; Idaho and Montana on February 1, 1901?

A. Yes, sir

Q. Do you know what was the relative density of passenger local traffic as between those various states? I mean as between the various states we have mentioned, including Minnesota, at the time these rates were put in.

A. I do not.

Q. Will you explain why the three-cent rate was put in in Wisconsin and why, in these farther western states, when it was put in?

A. I can't tell you why in Wisconsin, Mr. Durment; I was not here at the time and I don't know. It was put in in the far western states, as I think I testified this morning, by the direction of Mr. Mellen, who was then President of the Northern Pacific Railway Company.

Q. But you don't know why he did it?

A. No.

Mr. HOW: What his purpose was, what his reason was?

Mr. DURMENT: Yes.

Q. That is, you don't know upon what basis he considered it necessary?

A. No. It was done against the judgment of practically everybody else connected with the Railway.

Q. Yes, but you don't know whether it was done because they could afford to do it at a profit, could carry them at a three-cent rate and make a profit, or whether it was done to satisfy the people out there that they had the same rates that the eastern ends of the line—

A. No, sir.

Q. —or why it was done?

A. No, sir.

Q. Now, prior to May 1, 1907, what was the basis or the principle upon which interstate rates were made over your lines? Was there any rule according to which the rates were fixed throughout your lines, interstate rates?

A. Yes; generally speaking, three cents per mile, if that is what you mean.

Q. The through rates?

A. Yes; or the rate from here to Billings, we will say, was three cents a mile. It may have varied a few cents, but, generally speaking, three cents a mile. It may have varied because of a little short-line mileage somewhere. Our mileage between here and Fargo, as has been shown, is less than on the Great Northern; I think our mileage from here to Valley City is perhaps a little less than the Soo; so that, generally speaking, and just as far as it was possible for us to do it, the fares were constructed on the basis of three cents per mile.

Q. Both interstate and state fares?

A. Yes, sir.

Q. How far west from St. Paul did you apply that rule?

A. Just as far as we could.

Q. Well, then, how far could you?

A. Well, pretty nearly to Helena. Three cents a mile to Helena would have been $33.90, and our rate was $32.50.

Q. And from Helena on west what was the basis?

A. We added to that three cents per mile just as far as we could; then when we got to Spokane, competitive conditions forced a little lower rate there, the Great Northern mileage is a little less than ours; and then from there on, just exactly the same until we came to the $50-coast rate, which was arbitrarily made.

Q. And where would that $50-coast rate take you?

A. To Seattle, Tacoma, Portland, Victoria and Vancouver.

Q. In 1906, prior to May 1, 1907, what was the fare from St. Paul to Fargo?

A. $7.28.

Q. That was at the rate of how much per mile?

A. A little less than three cents per mile.

Q. The distance is what?

A. Our mileage is, I think, to be exact, 251 miles. I have not the mileage in front of me, but I think that is it.

Q. And the fare to Helena was what?

A. $32.50.

Q. And to Spokane?

A. $42.50.

Q. And to Seattle was $50.

A. $50.

Q. You said this morning that prior to May 1, 1907, I think, you had two rates to the coast.

A. No.

Q. One $60 and one $50.

A. No, that was prior to the reduction to three cents per mile, in 1901, Mr. Durment. Then we had two rates. One was a $60 rate, which was limited to thirty days, and which permitted stop-overs; the other was a $50 rate, but it was limited to a continuous passage. And that $50 rate was made because of a like rate which had been made by the Union Pacific through Omaha and Portland.

Q. And that was made for the benefit—or rather to enable

you to get your share—

A. Yes, sir.

Q. —of the business coming from beyond Chicago?

A. Yes, sir. Or,—you say from Chicago, from any of the territory that might be affected by the rate.

Q. Now, the distance from St. Paul to Tacoma is 1905 miles and a little over, I believe?

A. 1908, according to the official figures I have here.

Q. And that was a $50 rate?

A. Yes, sir.

Q. And Portland was 2,050 miles, I believe?

A. Yes, 2,052 miles.

Q. And that was a $50 rate?

A. Yes, a $50 rate; but bear in mind, Mr. Durment, that the controlling factor in making that rate was the Union Pacific mileage or the Union Pacific influence from Omaha, and their mileage from Omaha to Portland is between 1,800 and 1,900, if I recollect correctly.

Q. What was the fare between St. Paul and Butte, in 1907, prior to May 1st?

A. The same as Helena, $32.50.

Q. And the distance between the two is about the same, I take it?

A. Two miles difference in favor of Butte.

Q. And the fare to Billings from St. Paul?

A. $26.35.

Q. Now, during the time prior to May 1, 1907, or at least some of that time, you said the road issued mileage books at two and one-half cents a mile?

A. Yes, sir.

Q. And also some at two cents a mile?

A. Yes, sir; under special contract.

Q. What was the character of the two and one-half cent mileage book? Just generally.

A. We have about eight different forms of mileage book. We had one form of mileage ticket, containing coupons covering three thousand miles of travel, which was good over the entire System, confined, you might say to our own line outside of one or two others; and we had a one-thousand-mile ticket, which was good in the state of Minnesota, at $25, two and one-half cents a mile; we had a three-thousand-mile ticket, that was good in Minnesota and North Dakota and Wisconsin, which we sold for $75, and on presentation of the cover within twelve months, $15 was rebated, I think that is the exact amount; then we had also a five-thousand-mile ticket, which we sold at a flat sum of $100. The two-cent mileage was not good west of North Dakota. Does that answer the question, Mr. Durment?

Q. Yes, I think so. The one thousand mileage, good on your own lines in Minnesota, was two and one-half cents?

A. Yes, sir.

Q. The three-thousand miles good all over the System?

A. Was good only on our own lines. I should have said that we rebated back; the book we sold for $75 was an interchangeable book as between the Great Northern and our line and one or two others.

Q. But there was a three-thousand mileage book, good on your own lines anywhere; was that at two and one-half cents a mile?

A. Yes, sir.

Q. Then there was a three-thousand mileage book, good anywhere on your lines east of Montana, which you sold at $75, with a rebate of $15?

A. Yes, sir.

Q. That was two cents a mile?

A. Yes, sir; that was two cents a mile.

Mr. HOW: Do you call that a "rebate"?—A refund.

WITNESS: Refund, yes.

Mr. DURMENT: Refund, yes. I didn't mean to insinuate

anything improper.

WITNESS: Refused.

Q. That was interchangeable between your Road and the Great Northern, was it?

A. And the Great Northern.

Q. Then you had a five-thousand mileage book, at a flat two cents, without any time limit on it?

A. Oh, no; they were all limited to one year from date of sale.

Q. And that was good only east of Montana?

A. Yes, sir.

Q. And that was interchangeable with the Great Northern?

A. Yes, sir; with the Great Northern; interchangeable as between those two companies.

Q. And that was a two-cent flat?

A. Yes, sir.

Q. No refund on that?

A. No, sir.

Q. As I understood, the effect, as you claimed it, of putting into force the two-cent passenger rate in Minnesota on May 1, 1907, on interstate traffic, was this: Your interstate rates having been established between St. Paul, or points in Minnesota, and points in Dakota, and even farther west, upon the basis of the sum of the locals from St. Paul to Fargo and from there west, one wishing to go from some point in North Dakota beyond Fargo, could travel cheaper by buying a ticket at two cents from St. Paul to Moorhead and there transferring and paying a local from Moorhead or Fargo on?

A. You mean since May 1, 1907?

Q. Yes.

A. Yes; that was practically up to the time that our fares were adjusted to the new basis.

Q. It did not result in any decrease of passenger traffic,

did not result in decreasing the number of passengers who traveled on your road?

A. No, I don't think it did; nor do I think it resulted in any increase.

Q. But the only thing was that you got, on hauls from Minnesota into Dakota, the difference between three cents a mile in Minnesota and two cents a mile in Minnesota?

A. Well, I say the difference between the new and the old rate.

Q. Well, the maximum of the new rate was two cents, the maximum of the old rate was three cents a mile?

A. Yes.

Q. It may be that you carried at less than the maximum between certain points, I don't know about that.

A. You asked a direct question, and I only wanted to make myself clear that our fare—

Q. It did not result in any decrease in your receipts for the North Dakota haul?

A. The Minnesota reduction did not, no, sir; except as—not locally in North Dakota, I don't think it did.

Q. Now, I am not quite certain that I understood what you meant when you said that after May 1st you readjusted your through rates, your interstate rates.

A. After July 1st.

Q. Well, I don't remember whether you said the date, but it was some time after May 1, 1907, some time subsequent?

A. Yes.

Q. You readjusted your interstate rates from St. Paul and Duluth west?

A. Yes.

Q. When was that readjustment made?

A. So far as concerned North Dakota, on July 1st.

Q. 1907?

A. 1907. So far as the territory west of North Dakota

was concerned, not until about February, 1908,—the reason for that apparent long delay being that we were physically unable, with the help that we could get, to get the tariffs lined up all the way through and keep up the work that was coming in.

Q. At the time the Minnesota two-cent-rate went into effect, what was the local in North Dakota?

A. Three cents.

Q. When was it that the local rate in North Dakota became two and one-half cents?

A. July 1, 1907.

Q. When was the local rate in Montana by law changed from three cents, if at all?

A. It has not been.

Q. It has not been?

A. No, sir.

Q. When you rearranged your interstate rates July 1, 1907, or shortly afterwards, as between Minnesota and North Dakota, what was the basis of your interstate rates?

A. Three cents per mile. You mean as between North Dakota and Montana?

Q. You say that after July 1, 1907, that is, after the North Dakota reduction of two and one-half went into effect, you made up a new schedule of interstate rates as between Minnesota and North Dakota.

A. Yes, sir.

Q. On what basis did you make up those interstate rates between Minnesota and North Dakota?

A. The general basis being two cents in Minnesota and two and one-half in North Dakota.

Q. Made it again the sum of the locals?

A. Yes, sir.

Q. Were there any exceptions to that rule to speak of?

A. Not material.

Q. Of what character?

A. Well, from St. Paul to Valley City the Soo Line goes across the side of a triangle, we go around the other two sides, we meet their rate. The difference is slight. That also obtains at Carrington and perhaps one or two other points, but generally speaking, and just as far as possible, that was the basis.

Q. Yes, but what I want to get at now is whether there were any cases where it was not possible that it made any particular difference in the rate from what it would have been if you had followed the plan of the sum of the locals?

A. What is that question?

Q. Whether there were any exceptions to this plan of making the through rate the sum of the locals.

A. Well, there were no exceptions, Mr. Durment, except as competitive conditions—

Q. I know, but were there any of those exceptions which made any material difference in the rate?

A. No. That statement that I filed this morning gives a very fair statement of it.

Mr. HOW: That shows Valley City.

WITNESS: That shows Valley City and shows—Let me see that just a moment, Exhibit No. 52.

Q. Then, as I understand, Exhibit 52, that shows the old rate and the difference between the old rate and the new rate, the new rate being made upon the basis generally of the two cents a mile in Minnesota—

A. Yes, sir.

Q. —and two and a half for the haul in North Dakota?

A. Yes, sir.

Q. And the difference is divided or assigned, in this statement, to Minnesota and North Dakota upon the basis of a half a cent per mile reduction from the old rate in North Dakota and a cent per mile reduction in Minnesota?

A. Yes, sir.

Q. Has there been any time since May 1, 1907, when you made an interstate rate between any points in Minnesota and North Dakota upon the basis of two cents a mile for the entire haul?

A. I think not; I don't recall any.

Q. Referring to Exhibit 49, I find the first lot of figures with reference to passengers to and from Moorhead. That, I suppose means passengers to Moorhead from any direction, whether from Dakota or Minnesota?

A. No, only from Minnesota. This statement shows clearly that it is only passenger revenue in the state of Minnesota.

Mr. HOW: In the heading?

WITNESS: In the heading; so that there wouldn't be any North Dakota earnings in the statement.

Q. Then it includes nothing from those who come from west of Fargo, to Moorhead, nor anything from those who go west from Moorhead into Dakota?

A. Absolutely nothing.

The MASTER: Absolutely intrastate?

WITNESS: It is only intrastate; only within the state of Minnesota. You mean it does not include any North Dakota revenue?

Q. Well, I don't know what you term North Dakota revenue, but it does not include anything received from passengers who come to Moorhead from points outside of Minnesota?

A. Not unless you mean what they pay after they get to Moorhead. That is not what you are after?

Q. No, that is not what I am after. Nor anything that is paid by passengers after they get outside of Minnesota going from Moorhead?

A. No, sir.

Mr. HOW: The witness, of course, does not know whether those passengers came from beyond and made a new contract,

or whether they went beyond, after the expiration of the contract.

Mr. DURMENT: Oh no, I understand that.

Q. Was there any unusual traffic over your line in June, 1908? I mean any unusual amount of traffic over the line generally.

A. No, sir; on the contrary, the travel was less than usual.

Q. The travel which was less was mainly interstate travel, because of the disarrangement of the trains, schedules and the like?

A. Well, it was interstate travel, and we didn't have the same train service in Minnesota because of the disarrangement of our through train service.

Q. In June, 1908?

A. In June, 1908; I think something like twenty days.

Q. And yet there was a very decided increase in the business—

A. No.

Q. —to and from Moorhead in that month, in 1908?

A. Yes.

Mr. HOW: Increase over what month?

WITNESS: Over 1907?

Q. Yes, and over 1906.

A. No, over 1906, Mr. Durment, not over 1907.

Q. Not over 1907?

A. No. You see the local earnings in June, 1908, according to this statement, were $4,674; in June, 1907, they were $21,000 approximately, exactly $20,989.38.

Q. In 1907 that was the increase over 1906?

A. Yes, sir.

Q. Now, this figure, $4,674.41, that is June, 1908, and an increase of that number over—

A. Over 1906; but that was accounted for very largely by reason of the labor element that we had working on this new work that we are doing up this side of Dilworth, between Dil-

worth and Detroit,—Moorhead was the biggest town near and they used to pay their fare and go in and come out.

Q. Then in that particular locality as to that month there was an unusual condition?

A. Yes, sir.

Q. That accounts, in part, you think, for this increase?

A. Yes, sir. That is a temporary condition and always exists where you have labor camps near by.

Q. Now, as to business local to the state of Minnesota, that second heading on Exhibit 49, does that include the business to and from Moorhead or exclude it?

A. No, that includes it; the second bunch of figures includes it.

Q. Includes the first?

A. Yes, sir; the third bunch of figures very clearly states, eliminating the Moorhead business, it shows it without the travel to and from Moorhead.

Mr. HOW: The first and third put together make the second, do they not?

WITNESS: The first and third together make the second.

Q. I notice that in each of the months April, May and June, under the head "Local to the state of Minnesota," there was an increase in 1907 over the 1906 business, the increase in the year 1907 in the mopths of May and June, in which the two-cent rate was in effect, is very much greater than the increase in the month of April, when it was not in effect.

A. Yes, sir.

Q. How do you account for that?

A. I account for it by people purchasing tickets to Moorhead and then repurchasing from there, throwing into the state of Minnesota a lot of business which does not belong in it.

Q. And I don't know, did you keep any track to know whether there was any increased Minnesota business or not?

A. Well, you could hardly tell.

Q. Then in 1908, for each of those three months, there was a decrease under the 1906 business?

A. Well, in two of the months, Mr. Durment, according to this statement, there was a decrease in the local to Minnesota; that is all of it.

Q. That is in April and June?

A. Yes, sir.

Q. That was after you had equalized the interstate rates so that Minnesota would not get anything more than its normal business?

A. No, that was before we had done that.

Q. When did you do that?

A. July 1, 1907.

Q. Well, but this was in 1908.

A. In July, 1908, yes.

Q. When the business of May, 1908, was done, that feature was eliminated?

A. Yes.

Q. And the business was done upon the ordinary and natural plan?

A. Yes, sir.

Q. Except for the decrease in rates?

A. Yes, through the regular channel.

Q. How do you account for the fact that in the month of May, 1908, there was this increase in the Minnesota business over the business of May, 1906, and yet there was a decrease in the business for the months of April, 1908, and June, 1908, as compared with those months in 1906?

A. Well, I don't know just exactly how to account for it, Mr. Durment; some of that increase in May, 1908, is due to the fact that travel was a little better at that time.

Q. Is it usually better in the month of May?

A. Well, the Minnesota earnings have not been showing a marked increase for a good many years, but aside from that, the

other states have shown a little or slight increase right straight along, from time to time.

Q. Up to May 1, 1907, for what period of time was it that the Minnesota earnings had not been showing much increase from year to year?

A. Quite a good many years.

Q. And for what period prior to May 1, 1907, had the Montana and the North Dakota business been showing an increase from year to year?

A. Oh, generally speaking, for seven years.

Q. I suppose that Montana and North Dakota, during those years, were not as thickly settled as Minnesota along your line, or were they?

A. I don't know about the population, but I should say proportionately that the population was not so heavy; in fact, the population west of North Dakota, up to two years ago, was practically nil; it was very, very sparsely settled; and that was equally true of Montana. It is only within the past two or three years that they have been opening up the irrigation projects in Montana, that any number of people have gone in there with a view to doing what you might call agriculture; up to that time, a few men had been in there with big stock ranches, but that does not mean people. And the same might be said of western North Dakota. Take western North Dakota west of Bismarck or west of Mandan, from Mandan to Dickinson, there was more or less settlement in there three or four years ago, but west of there, west of what we call the Bad Lands, that settlement went in about two years ago.

Q. And the other about four?

A. And the other, between Mandan and Dickinson, about four. And yet the country between Jamestown and Mandan, as you probably know, is not thickly settled yet; the soil in there seems to be against it. I don't know why.

Q. How is the territory along your lines in Washington and

Montana west from Spokane?

A. There is more settlement there than there is in Minnesota.

Q. Now?

A. Yes, sir.

Q. How long has that been so?

A. It has been going in there for a good many years; I don't know just exactly when it would cross the line if you wanted to know when the difference came about.

Q. Oh, only approximately, if you know it. It doesn't make any difference.

A. You see, Washington will support quite a dense population, in a good many of its districts, on account of the fruit-growing.

Q. I notice in the business in this Exhibit 49 "Local to the state of Minnesota, eliminating Moorhead business," in the year 1907, month of May, the business done was less than in the month of May, 1906—

A. Yes, sir.

Q. By $1,428.98. That was the first month in which the two-cent rate was in effect, was it?

A. Yes, sir, that was the first month.

Q. In the month of June, 1907, the earnings were greater than the month of June, 1906?

A. Yes, sir.

Q. That was the second month that the two-cent rate was in effect?

A. Yes, sir. That was the second month, and that increase was due very largely to this travel that was forced over from North Dakota by reason of the lower rate.

Q. But you have eliminated the Moorhead business?

A. I know, but we have not in this eliminated East Grand Forks business which is shown over in this other statement. We take Moorhead only as an example. The same thing is

clearly true as between Breckenridge and Wahpeton; the same thing is true between East Grand Forks and Grand Forks. On that other statement we have shown you the number of tickets, cash fares, etc.

Q. Yet in 1908, in the month of April, after you had eliminated this interstate feature, you have a still further decrease in Minnesota, less than it was in 1906 and less than it was in 1907?

A. Which figures are you looking at?

Q. $73,498.40. That, you claim, I suppose, would be a loss due entirely to the difference in rates on local traffic?

A. Very largely. There might be some other causes, but that would be the principal cause.

Q. And in that same year, for the next month, there is a profit instead of a loss?

A. Well, there is an increase.

Q. And a difference in the next month also; that is, June, 1908?

A. Yes, sir. The increase in May, Mr. Durment, is due very largely to the fact that in the month of May we were taking for some contractors a lot of laborers up to this new work of which I speak. That contributed, I think, a little more than the entire increase.

Q. That was still Minnesota business?

A. Yes, sir.

Q. Notwithstanding the decrease in revenue from the Minnesota two-cent rate and the North Dakota two and one-half cent rate and the Wisconsin two-cent rate, there was an increase, in the months of April, May and June, of the passenger receipts for the entire road, was there not?

A. In April and May. June shows a decrease.

Q. Well, April and May. Now, this last here, "Whole Road" includes your entire passenger receipts, does it not?

A. Yes, sir.

Q. Over the entire line?

A. Yes, sir.

Q. And in the year 1907, in which there were two months of the two-cent Minnesota rate, there was still a very considerable increase?

A. Yes, sir.

Q. And in the month of June, 1907, the second month when the Minnesota two-cent fare was in effect, there was a still larger increase over 1906?

A. Yes, sir; that was due entirely to the very heavy travel west of Minnesota—in fact, west of North Dakota.

Q. And in the year 1908, when this effect of the Minnesota rates on interstate traffic in throwing it out of the usual channel, had been eliminated, and people were moving along the old lines, except different rates, there was a still greater increase in the business of the entire road in the month of April than there was in the year 1907, April, over 1906?

A. Yes, sir; that is true.

Q. And that was true also as to the month of May, 1908?

A. Yes, sir; that is true.

Q. Then, also, in the month of June, 1908, there was a falling off. How do you account for that?

A. The very marked falling off as compared with 1906?

Q. Yes.

A. That is due to two causes. One is the reduction of interstate fares east of Montana. The other is due to water conditions that we suffered in Montana, the water troubles that were suffered throughout the state of Montana, you might say.

Q. Then that loss, of June, 1908, you don't claim indicates the loss from the 2-cent fare?

A. Much of it.

Q. Yes, but then there is another element in there?

A. Yes, sir.

Q. And you are not able to figure out what proportion is due to each, are you?

A. No, I don't believe I could.

Q. Now, will you turn to Complainant's Ex. 53, Mr. Cleland As I understood you, this morning, there are certain rates in Montana known as Montana common points?

A. Yes, Helena and Butte, because of their equal distance.

Q. Those are the only two?

A. Those are the only two. Formerly there was another one. Anaconda formerly took the Helena-Butte rate, but with the introduction of these lower fares, we eliminated Anaconda as a common point.

Q. You spoke of being compelled to take Drummond as a basing point, if I get the term correct, by reason of the competition?

A. Yes, sir.

Q. Now, please explain just what you mean by that and what territory it affects.

A. The Union Pacific and its connections (now known as the Oregon Short Line, known, when we reach Montana, as the Utah & Northern Railway) insisted, for a great many years, on getting into our territory, and, in the getting into our territory they applied the common-point rate to Drummond. It was applied, under ordinary conditions, to Garrison, because the Helena rate from Salt Lake, if you please, pulled to Garrison. It applied across the Great Northern from Butte to Helena (the old Montana Central) and it also applied over our line around by way of Garrison, so that it naturally pulled to Garrison, and they carried it a little beyond, and we were forced to do the same.

Q. How far beyond Garrison is Drummond?

A. About fifteen miles, I think.

Q. Then that simply added fifteen miles haul for the same rate?

A. Yes, sir.

Q. And you did that because the other road did it, and you had to do it to meet competition?

A. Yes, sir.

Q. From what points did you make your rates to Drummond to meet the competition of the other lines?

A. From St. Paul and all points which took the St. Paul rate or from St. Paul and every point which based over St. Paul. Likewise was it done for a long time by the Burlington in connection with business which they delivered to us at Billings, not only from Omaha and Council Bluffs, but from Kansas City as well, so that you might say that it affected all of the territory east of St. Paul and east of the Missouri river.

Mr. HOW: You say east of St. Paul?

WITNESS: West of St. Paul, I mean.

Mr. HOW: West of the Missouri river?

WITNESS: Yes, it affected the revenue of the lines, it affected the rates in all the territory, east and west, but it affected the revenue of the lines west.

Q. Then, as I understand it, this Union Pacific made a rate from Kansas City and Omaha and certain other points to Drummond—

A. Yes, sir.

Q. —upon a certain basis?

A. Yes, sir.

Q. And to meet that rate your road made the same rate from St. Paul and other points which took the St. Paul rate—

A. Yes, sir.

Q. —to Drummond?

A. That is true.

Q. Now, how much per mile did the fare, under that condition of affairs, figure out from St. Paul to Drummond; do you know?

A. I can tell you.

Q. If you please.

A. The rate per mile was 2.76 cents, $33.15 was the rate.

Q. To Garrison?

A. To Drummond. The rate per mile in cents was 2.76.

Q. Now, referring to Ex. 53, taking from New York to Fargo, the old rate prior to May 1, 1907, was $38.50; of which your road got $7; is that right?

A. Yes, sir.

Q. That was on the basis of three cents a mile from St. Paul to Fargo, or what basis?

A. Practically so, it was on the basis—it was the Minneapolis fare used as a basing rate in the construction of the through fare.

Q. Now, that, as I understand it, was $38.50 from New York through to Fargo, upon a through ticket, which transported the passenger's baggage which he was allowed to carry on his ticket from New York to Fargo, without re-checking it, and under which he could reserve a through sleeper from New York to Fargo, at New York?

A. Yes, sir.

Q. Why was it necessary, then, after the 2-cent rate went into effect in Wisconsin and in Minnesota, for the Northern Pacific to reduce the through rate?

A. The Northern Pacific didn't reduce the through rate; the Northern Pacific is not the rate-making line out of New York. The lines out of New York reduced the rate, because they found people buying only to Chicago and taking advantage of the rate. The lines west of Chicago became very active in getting the lines east of Chicago to adopt the new basis because the lines west of Chicago wanted the through ticketing, and to save the passengers the inconvenience. They felt that it was really an unjust discrimination against the the territory west of Chicago.

Q. There is a difference of $2.35 from New York to Fargo

between your present rate—

A. That is only our proportion.

Q. That is the difference you make?

A. Yes, sir; that is only our—

Q. And the difference in Wisconsin?

A. You see there is a difference of $5.85.

Q. But the lines east of Chicago stand none of that?

A. No, sir.

Q. The lines west of Chicago do,—a difference of $5.85?

A. Yes, sir.

Q. Why did you figure that it was an unjust discrimination as against passengers to require those who had the advantage of buying a ticket through, shipping their baggage straight through, and obtaining their accommodations in the way of sleepers and the like from New York through to Fargo without any trouble?

A. I don't know that I would consider it an unjust discrimination against passengers, and yet it would be charging them more than the sums of the locals; we thought it was an unjust discrimination more particularly against the territory west of Chicago. And, furthermore, it got so bad down there that most of the lines, the Union Pacific and the Great Northern and Canadian Pacific, instructed their representatives in the East to solicit business by selling their pre-paid ticket orders; that is, they could take the passenger and sell him right in their own office a pre-paid ticket order, using the new rate from Chicago for the sale of that ticket. Now, the trunk lines, what are known as the trunk lines—that is, the Chicago, or the Buffalo-New York, and the Pittsburg-New York lines—objected very seriously to that; they are very sensitive as to the use by any representative other than their own lines of anything that partakes of a form of transportation in their territory. In other words, Mr. Durment, they want to do the business themselves; and they were at a disadvantage in the making of the through

fares because they couldn't get the rate-sheets out; they were just as anxious to avoid the complaints that they were getting in their office.

Q. Well, what I don't quite understand, Mr. Cleland, is this: If the situation east of Chicago was such that those roads were complaining, and they were objecting to it because they couldn't route the passengers all the way through, that the roads west of Chicago should stand all of the cut and the roads east none.

A. Well, the various losses, Mr. Durment, the various reductions in local fares that were made east of Chicago, did not bring the through rate down so that it was necessary for them to make the cut to the same extent that it was there. The Pennsylvania Railroad's rate in the state of Pennsylvania is three cents a mile; their rate locally in Ohio, Indiana and Illinois, is two cents per mile, we will say; their rate three cents from New York and Jersey City to Pittsburg, or out to the state boundary between Pennsylvania and Ohio, crossing the Ohio and Pennsylvania state line, they had three cents a mile all that distance; there wasn't the same necessity for reducing the fare. The sums of the locals between New York and Chicago were not affected so much.

Q. Yes, that is true, but I don't think I am making myself plain. As I understood you, one reason why you put in the through rate or made a joint through rate, taking two cents a mile for your haul from St. Paul to Fargo was that the trunk lines were making a great fuss, if I may so term it, about the trouble they had in doing through business?

A. Yes, passengers that go into the office and buy a ticket to Chicago.

Q. And they were more interested, apparently, to have the through rates made than you were?

A. They were interested, but they couldn't because they couldn't get the force to get the rate-sheets out fast enough.

Q. Then, if they were as much or more interested than you, why was it that when there was a reduction made of the through rate you had to stand all of the reduction?

A. Because they were not interested in the reduction that was made.

Q. No, but they were interested in having the lower rate?

A. Not to the extent that they were willing to buy it.

Q. They were not willing to pay anything for it?

A. No, sir.

Q. Why should you be willing to buy it?

A. We didn't buy it. This is simply reducing our rate to the same basis west of St. Paul that applied from Chicago, if you please. You see, Mr. Durment, in constructing the fares from New York to Fargo they take the Chicago rates; they don't take the St. Paul rates.

Q. I know they do, but what I am getting at is (what I think I see) is that while that is true, and while it may be convenient, that there is no real necessity for your throwing away your part of that through rate.

A. We are not throwing it away.

Q. You are not?

A. No, sir; I don't look upon it as such.

Q. Did you get any less business locally, that is, when they had to buy it to Chicago and then on west, than you did when they had the through rate?

A. We do over those lines, yes, sir.

Q. How would they go, then, from there West?

A. They would buy a ticket; that is, our business from those lines decreased. Their ticket sales would only show to Chicago.

Q. But your business from Chicago, on that theory, ought to increase?

A. Yes, but that would be business from Chicago; we couldn't segregate that as New York business, because there would be nothing to so indicate.

Q. No, but it increased, didn't it, as a matter of fact?

A. Possibly; the local rate from Chicago of $8, you will recollect, as a matter of fact, when they first made the reduction from $11.50, I think they reduced it to $8.70, didn't they?

Q. I don't remember.

A. There were two or three reductions in there, you know.

Q. Yes.

A. First, the state laws didn't become effective at the same time; there were two or three reductions in there, and the Chicago lines were slow in getting out their tariffs because they didn't want to go to the expense of getting out great big tariffs until the rate was finally settled, and that resulted in the tariffs being held up for perhaps two or three months longer than they otherwise would have been.

Q. Is it your experience that no considerable number of people are willing to pay an additional price for a through transportation with its corresponding advantages?

A. There aren't any corresponding advantages, Mr. Durment.

Q. No corresponding advantages, of having your baggage checked through?

A. That is the only advantage.

Q. Isn't there a corresponding advantage in not having to purchase a ticket midway?

A. It doesn't amount to a great deal; that is, for the saving they will do it.

Q. And can they reserve their sleeping-car privileges just the same?

A. Yes, sir.

Q. From New York through?

A. Yes, sir.

Q. Then you think there would be no particular advantage?

A. No, sir.

Q. And your road you think would be compelled to carry

from Chicago, for instance, locally at the local rate anyway?

A. Yes, sir.

Q. Now, suppose someone wants to go from New York to Fargo, if the through rate wasn't made, you say they would buy from New York to Chicago, from Chicago to St. Paul, and then from St. Paul to Fargo?

A. Yes, sir.

Q. Or Moorhead?

A. Yes, sir.

Q. Are the rates from these Eastern points, the through rates as shown by Ex. 53, made up on the same basis from all eastern points as from New York?

A. Practically so.

Q. A flat rate to Chicago, plus the locals from there on?

A. Yes, sir, that is the customary way of making a rate whenever it can be made.

Q. For how long a time before May 1, 1907, was it that the Northern Pacific Railway Company got for its share of a through ticket from New York to Fargo, or west, the local from St. Paul to the western point of the journey?

A. Well, generally speaking, and on most of our local fares, we have been getting our locals for a great many years.

Q. Well, on most of your local fares?

Previous question read.

A. Several years.

Q. Then in the division of through traffic, if there was any reduction of rates below the local, (that is, the sum of the locals) it was stood by the roads east of Chicago; is that right?

A. That is a pretty hard question to answer intelligently, I think, because it could be answered three or four ways. It is not the intent, in rate-making, that any one line shall stand all of the shortage that may exist in any one rate, and rates never are constructed on that basis. Now, if it was found necessary, in the construction of a fare from Chicago to Helena, to use less

than the sum of the locals, as made over St. Paul, the line between Chicago and St. Paul would participate with the line west of St. Paul in whatever shortage might be necessary to meet the rate that was made by the competitive conditions to which that refers. Now, you take that Fargo rate, Mr. Durment, there is an example of it: The Northern Pacific, in that case, was obliged to accept $7; the exact division that the Northern Pacific was obliged to accept is shown on the other column, $6.98; the trunk lines used $7 because it was a convenient figure and didn't make the fare end in odd cents. Now, that is the $6.98 old Minneapolis rate. As I explained to you a few moments ago, one of the lines was willing to accept, at St. Paul, Fargo business on that basis; therefore, we must either do that or the lines in making the rate would make our rate over St. Paul, which would necessarily make our rate higher by the difference between the fare from Minneapolis and the fare from St. Paul. Do I make myself clear?

Q. Yes.

A. Now, there are certain conditions where, we will say, the lines between Chicago and St. Paul, are not interested in the shortage; they are not interested in that, we were; they could send their traffic over another line for less than they could send it over ours, if we insisted on the maintenance of the St. Paul basis.

Q. Over what other lines could the trunk lines send their business west into Dakota and Montana?

A. To Fargo, I say.

Q. Well, say to Fargo.

A. They could have sent it out there over the Chicago, Milwaukee & St. Paul road. That is the road I had in mind.

Q. That is, without going through Minnesota?

A. No, they go through Minnesota, but the Milwaukee & St. Paul built their rate to Fargo $11.50 from Chicago to Minneapolis, $6.98 from Minneapolis to Fargo. Now, Fargo was

the only one of the points on our line that they touched. Now, they tendered, as we call it, to the lines East, the basing rate of $18.48 from Chicago to Fargo; that is what brought that Fargo situation about. That is about the only one of the North Dakota stations that is so affected.

Q. Then you had to make the Fargo rate to meet the Milwaukee's competition?

A. Yes, sir.

Q. But, under the new plan, you had your choice between accepting the cut in the Fargo rate as a part of the through rate, or hauling your passengers locally at the same rate?

A. Yes; I think, if I understand your question correctly, yes.

Q. That is, you—

A. You see we are obliged to use the Minneapolis-Fargo basis in construction of fares from St. Paul.

Q. Yes, but you could have refused—your Road could have refused to make a joint rate from New York to Fargo for less than $7 for your share?

A. Yes, if we had wanted to have gone out of the business.

Q. And that would have meant one of two things—

A. It wouldn't have meant only one thing.

Q. Well, it would depend on whether they all did the same thing?

A. No, the result would be the same eventually, Mr. Durment.

Q. It resulted in this, didn't it, then: that either you would take the local at two cents from St. Paul to Fargo, as your share of the joint rate from New York to Fargo, or lose the business, if other roads would take their share?

A. Yes, sir.

Q. Or, if they wouldn't, then haul your share of the passengers locally from St. Paul to Fargo at that rate —

A. Yes, sir, if I understand your question right.

Q. Now, if I have understood the answer you have made to the last question or two back, the theory of through rates is that the through rate, if you can hold it at that figure, shall be at least the sum of the locals over each line?

A. I so stated, yes, sir. It is not only the theory but it is the practice.

Q. And, so far as that can be done, the roads hold to that theory and practice?

A. Yes, sir.

Q. If by reason of competition, or something else, it becomes necessary to make a through rate that is less than the sum of the locals over the various lines, ordinarily each road will stand its proportion of the reduction?

A. Well, as I tried to explain to you if the reduction occurs west of Chicago and the lines from New York to Chicago can ticket business to Chicago and their porportion is not affected, they don't make any change. Now, any change that there may be must be stood by the lines west of Chicago.

Q. Well, now, why? that is the point.

A. Why? because the line East is not interested. That is they are not interested to the extent of dollars and cents. They are interested in the sale of through tickets, but they get nothing additional from the sale of a through ticket.

Q. Just the advertising of their line?

A. That is all, and the accommodation that they give their passengers, and the complaints they avoid because passengers can't buy through tickets.

Q. And for that reason they can haul them to Chicago and dump them there?

A. Yes.

Q. How far from New York to Chicago is the short-haul by the trunk lines?

A. Pennsylvania line, 905 miles or 906.

Q. 906?

A. I think it is 906.

Q. Then that through rate is upon the basis of about two cents, isn't it?

A. Yes, a little more than two cents.

Q. Yes, just a trifle. From Philadelphia to Chicago what is the distance?

A. In round numbers, 821 miles.

Q. Do you remember what is the average rate per mile per passenger received from passengers over your road in the year 1908?

A. No, sir, I have seen no figures showing that.

Q. Do you remember what it was for the year 1906?

A. No; I don't see statements of that kind if they are prepared, Mr. Durment.

Q. You don't know, then, about those rates at all?

A. No, sir; that is an accounting department proposition.

Mr. How: You will have the accountant on the stand, Mr. Durment.

Q. Referring to the Railroad & Warehouse Commission's report for the state of Minnesota for 1906, to a table there contained as table 21, passenger statistics, it appears that the average receipts per passenger per mile for passengers carried on the Northern Pacific for its entire lines beginning in 1897, starts with an average of 2.8 cents in 1897, ends with an average in 1906 of 2.09 cents; it is true, is it not, that during the whole of that period the local rate in the various states was 3 cents a mile?

A. No, that is hardly correct. Prior to the time that the rates were reduced to three cents per mile, the local rates existing prior were four and five cents, having been changed on varying dates.

Q. I find, by referring to table 21 in the Railroad & Warehouse Commission's report to the state of Minnesota for the year 1906, that the average receipt per passenger per mile for

passengers carried over the entire Northern Pacific lines was 2.8 cents in 1897; that there were varying decreases from that figure, as an average, for succeeding years, until in the year 1906 the average per passenger per mile was 2.09 cents; now, what was the local rate for the various states through which your Road operated during the years 1897 and 1906 inclusive?

A. Well, if I recollect correctly, Wisconsin went to a three-cent basis in 1893.

The MASTER: From a higher basis?

WITNESS: From a higher basis, yes, sir. The other rates were reduced at varying dates from that time, until, in 1901, we finally got down over the entire System, to a three-cent basis. Does that answer the question?

Q. That answers it, yes. You were asked by Mr. How as to what would be the effect on your interstate business if all the states should make a two-cent rate; you said you would have to reduce all your rates; then you were asked to what basis, and you expressed the opinion that it would pull you down to a basis of $35 from St. Paul to the coast.

A. That is about right; a little less, perhaps.

Mr. HOW: You based that upon the short-haul?

WITNESS: The C. M. & St. P. new mileage.

Q. That is not open yet, is it?

A. No, sir.

Q. What is that new mileage?

A. 1774 miles to Seattle.

Q. And that would be how much per mile?

A. Two cents a mile.

Q. About two cents a mile?

A. Yes, sir.

Q. I have had some computations made from reports or from information which Mr. Hillman obtained either from the reports made by the Road or the books of the Road, from which it appears that the average for interstate passenger earnings

on the whole line, in the year 1901, was 2.0824 cents per mile per passenger, and that there has been a gradual decrease in that average receipt until, in the year 1907, the average price is 1.7192 cents per mile. If these figures are right, then at $35 to the coast you would get considerably in excess of two cents a mile, wouldn't you? I mean considerably in excess of that average.

A. Yes, if we could maintain the two-cent basis; of course two cents would be higher than the one cent and a fraction you speak of. If we could maintain that two-cent basis; but if the two-cent rate were forced upon us in all the states, there are certain localities in which other lines, having shorter mileage, would govern the rate, and if a two-cent rate were put in locally it would reduce the interstate rate. I only spoke of that this morning as an approximate figure because I had those figures in mind.

Q. But if my figures that I am furnished are right, even at the $35, you would still be getting nearly three-tenths of a cent more per mile than your average for interstate business over your entire lines in the year 1907?

A. Well, we would if we could hold up to the two-cent rate as a maximum, but you know that that is practically impossible.

Q. Then you figure two cents as a maximum, but you must always, by reason of competition, and some other things—

A. No, I speak of the two cents in that connection only.

Q. But I say your theory then is, as I understand it, that it is never possible for a railroad to keep its rates up to the maximum?

A. I don't believe it is.

The MASTER: The $35 would be the maximum?

WITNESS: It would, unless there were some local conditions that came in which would cause a change.

The MASTER: That would be the maximum?

WITNESS: That would be the maximum, yes, sir. If the

rate was constructed at two cents per mile, that would be the maximum.

Mr. How: I understand that it is the fact, so that I can safely stipulate it, and I am willing to stipulate it, that Mr. Shepard acquired two hundred shares of Northern Pacific stock at the time of the re-organization and from the re-organization managers, if you (Mr. Durment) are willing to stipulate that fact, and that he still holds that stock and has held it ever since, —if those are the facts.

Mr. DURMENT: Yes, I am willing to do that if those are the facts.

Mr. How: Then I know where I stand.

The MASTER: Such a stipulation would make it unnecessary to take further testimony on that point anywhere.

Mr. DURMENT: Yes.

Mr. How: That is what is intended that the stipulation shows.

The MASTER: Of course, there is no stipulation—I don't understand that there is any—but your suggestion is that if you (Mr. How) will stipulate thus and so Mr. Durment will stipulate thus and so, and I suggest then that such a stipulation, if it is made, will obviate the necessity of taking any further testimony on that point.

Mr. How: That is the purpose of the stipulation.

Adjourned until Thursday morning, Dec. 17th.

FEDERAL BUILDING, St. Paul, Minn., Monday, December 21, 1908.

The hearing was resumed at 10 o'clock A. M.

WILLIAM G. JOHNSON,

sworn on behalf of Complainant, testified:

By Mr. BUTLER:

Q. What is your occupation?

A. Assistant Comptroller of the Northern Pacific Railway Company.

Q. How long have you been employed by that Company?

A. I entered the service of the Northern Pacific in the early part of 1884, and, with two short interruptions, I have been in the service of the Company ever since.

Q. And the Comptroller of that Company, as it already appears in this case, is the chief accounting officer.

A. Yes, sir.

Q. And you are Assistant Comptroller?

A. Yes, sir.

Q. And next in authority to the Comptroller in that department?

A. Yes, sir.

Q. Mr. H. A. Gray, it appears, is the Comptroller.

A. Yes, sir, Mr. Gray is the Comptroller.

Q. And how long have you been the Assistant Comptroller?

A. About four years.

Q. And that is the four years last past that you have been Assistant Comptroller?

A. Yes, sir.

Q. And before that time, did you have a title?

A. Yes, sir, I was Auditor of Disbursements.

Q. Your duties as Assistant Comptroller are substantially the same as that of Comptroller of the road?

A. Practically the same, yes, sir.

Q. The same general work is in your charge as is in the charge of Mr. Gray?

A. Yes, sir, the same general character of work.

Q. Now, have you, in this case, from the books and papers and files and records of your office, prepared, at the request of counsel for the Complainant, certain statements or exhibits, touching the traffic of that Company, its earnings and the like?

A. Yes, sir, I have.

Q. Have you made a statement comparing the Minnesota freight and passenger business with that of all other states and the entire road, for the fiscal year ending June 30, 1906?

A. I have, yes, sir.

Q. Will you produce the statement.

Witness produces statement marked "Complainant's Ex. 54—Johnson."

Q. The statement marked Ex. 54—Johnson is the statement to which you referred in your last answer?

A. Yes, sir.

Mr. BUTLER: The statement is offered in evidence.

Q. Now, Mr. Johnson, that the record may show something of the substance of the exhibit, I will ask you a question or two touching the exhibit itself. At the top of the exhibit against Minnesota Intrastate is "tons carried, 1,446,616," and in the column marked Ratio of Each Class is "12.33 per cent." As I understand that statement it shows that of the number of tons carried, 12.33 per cent of all carried in Minnesota is local to Minnesota?

A. Yes, sir.

Q. Of Minnesota instrastate the true intrastate is 12.33 per cent?

A. Of the whole business, measured by tons carried.

The MASTER: When you speak of class you refer to interstate and intrastate?

Mr. BUTLER: Yes, sir, in this connection.

Q. And the 87.67 is the balance of the business done in Minnesota, making the one hundred per cent of the tons carried in Minnesota?

A. Yes, sir.

Q. Now, the next column is Tons One Mile; that means the number of tons carried one mile, or ton miles, as it is sometimes called?

A. Yes, sir.

Q. Which is the same thing. It is 139,737,586, and the percentage of the total is 2.67 per cent. Now, that means of the System total, does it not?

A. It means that the Minnesota intrastate tons one mile is 2.67 per cent of the entire System's business.

The MASTER: That is not limited at all to Minnesota?

Mr. BUTLER: No.

The MASTER: But the whole System?

Mr. BUTLER: The whole System.

WITNESS: Of the whole System, yes, sir.

Q. And by "the Minnesota interstate," you mean business which is interstate business and which moves in part in Minnesota?

A. Yes, sir. The figures shown in the statement show the tons one mile of the interstate business within the state of Minnesota.

Q. And the percentage to the whole System, tons one mile, is 18.94 per cent?

A. Of the interstate business, yes, sir.

Q. Making a total percentage of tons one mile of the whole System 21.61 per cent which is carried on the rails in Minnesota?

A. Yes, sir.

Q. Both interstate and local?

A. Yes, sir.

Q. I am right about that, am I not?

A. Yes, sir.

Q. Now, taking the last column, the Average Haul of the Minnesota intrastate or the Minnesota local business, is 96.6 miles?

A. Yes, sir.

Q. By that is meant that the distance hauled, on the average of each ton of freight that is moved locally within the

state, is 96.6 miles?

A. Yes, sir.

Q. Of the Minnesota interstate business the average haul is shown to be 184 miles?

A. 184 miles within the state of Minnesota.

Q. Now, let us be clear about that. That 184 miles is the distance that the Minnesota interstate business is, on the average, hauled within the boundaries of the state of Minnesota?

A. Yes, sir.

Q. The total in Minnesota "average haul 165.6 miles" means that of all the business moving in Minnesota, both local and interstate, the average haul within the state of Minnesota of each ton is 165.6 miles?

A. Yes, sir, that is true.

Q. Now, the total, entire road, the average haul is 341 6?

A. That is the average haul of the entire Northern Pacific System.

Q. Whether it is local in Minnesota or any other state, or whether it is interstate business?

A. It is the entire business.

Q. That is, taking all the tonnage and all the hauls, and striking an average, the average haul is 341.6?

A. Yes, sir.

Q. That is for the fiscal year ending June 30, 1906?

A. Yes, sir.

Q. Now, in respect to that part of Exhibit 54—Johnson which refers to the passenger business, the first column, I notice, shows the number of passengers carried, the second the ratio of each class, and the third the passengers carried one mile, and percentage of total, and the average distance carried?

A. Yes, sir.

Q. The number of passengers local to Minnesota in that year, as I read your exhibit, was 1,192,002 passengers?

A. Yes, sir.

Q. And that amounted to 32.79 per cent of the number of passengers carried on your lines within the state of Minnesota?

A. Yes, sir.

Q. And the Minnesota interstate, I observe to be 67.21 per cent of the number of passengers carried within the state of Minnesota.

A. Yes, sir.

Q. Now, the third column indicates the passengers carried one mile; that is, to take the number of passengers and multiply it by the number of miles each is carried, is the way that figure is arrived at?

A. Yes, sir.

Q. And of the Minnesota local there are 38,158,981 passenger miles, in Minnesota?

A. Yes, sir.

Q. Which is 5.79 per cent of the passengers carried one mile on the whole System of the Northern Pacific Railway?

A. Yes, sir, during that year.

Q. That is, the local passenger mileage in Minnesota was 5.79 per cent of the total passenger mileage on the whole road?

A. Yes, sir.

Q. And the Minnesota interstate was 11.87 per cent of the passengers carried, of the total System?

A. Yes, sir, of the System total.

Q. Passengers carried one mile. So that of the passenger business of the System total there is 17.66 per cent carried one mile?

A. Of the System total of passengers carried one mile, 17.66 per cent is hauled within the state of Minnesota.

Q. Now, with respect to the average distance carried: As I read the exhibit, the Minnesota local passengers were carried, on the average, 32 miles per passenger?

A. Yes, sir.

Q. The Minnesota interstate passenger was carried 155.4 miles within the state of Minnesota?

A. Yes, sir, within the state.

Q. And the average haul within the boundaries of the state of Minnesota of all passengers, both local and interstate, was 68.6 miles?

A. Yes, sir.

Q. And the average haul of all passengers on the System, whether local to any state or interstate, was 111.3 miles?

A. Yes, sir.

Mr. BUTLER: Was there any other question the Master desired to ask at this point? It was about all I intended at this point.

The MASTER: Taking that passenger business, Minnesota intrastate, ratio of each class 32.79 per cent, that is not the same as the ratio above on the freight business. What is this ratio here, again?

Mr. BUTLER: Well, let me see if I understand that, Mr. Johnson. The ratio on the freight business is the number of tons carried, the ton being considered the unit of the freight traffic.

The MASTER: Well, is that over the whole System, or just simply—

Mr. BUTLER: Minnesota local.

The MASTER: Yes, Minnesota local. Now, down here on passenger business, is that local business?

Mr. BUTLER: Yes, sir, only the per cent instead of the tons.

The MASTER: Yes, I see.

Mr. DURMENT: In both freight and passenger, the ratio is the proportion of the entire Minnesota business in that column.

The MASTER: Yes. The number of passengers carried.

Mr. BUTLER: I think those figures are transposed. Just

make a test of that, Mr. Johnson. I see those figures are transposed.

Mr. HOW: Which column is transposed, the first or second?

WITNESS: The 1,192,000—I will have that exhibit fixed—the 1,192,000 should be down below, Judge. It is a clerical error.

Mr. BUTLER: It is a mere error in tabulation.

Mr. HOW: The first two figures in the first column are transposed?

WITNESS: That is the idea.

Q. That is 503,306 should be Minnesota intrastate.

The MASTER: Yes.

Mr. DURMENT: Does that change the other columns?

Mr. BUTLER: No.

Q. That wouldn't change any other figures?

A. I don't know; I would have to look into that. The only change necessary there is the second column. Judge; the percentages have been transposed. The figures otherwise are correct.

Mr. DURMENT: Well, how would that stand. Mr. Johnson?

WITNESS: Under the head of Passenger Business the ratio of each class should be, for Minnesota, intrastate, 67.21 per cent, and for the interstate, 32.79 per cent.

Mr. BUTLER: Now, if that may be changed, right on the face of these exhibits, it will be all right.

Witness makes the change in the exhibit in pencil.

Q. Mr. Johnson, did you also make a statement showing the intrastate average rate per passenger per mile in Minnesota, Wisconsin, North Dakota, and all other states, for the eight fiscal years ending June 30, 1908?

A. Yes, sir.

Q. Produce the statement and we will have it marked "Complainant's Exhibit 55—Johnson." The statement

marked Johnson—55 is the statement referred to in your last answer?

A. Yes, sir.

Mr. BUTLER: It is offered in evidence.

Mr. DURMENT: Of course, I suppose it is understood, as it has been with reference to other tables, that if the State desires to have any information with reference to these figures as to business in Wisconsin and North Dakota or other states, their witnesses will be at liberty to examine the records?

Mr. BUTLER: Oh, yes.

Mr. DURMENT: We may not want to, but we may find it desirable to look into the original records for cross-examination, or to meet it.

Mr. BUTLER: That is right. We would be glad to have you.

Mr. DURMENT: The reason I mentioned it, one road has declined to permit us to do so.

Mr. BUTLER: In these matters?

Mr. DURMENT: Yes, so I understand. It was not your road, but another road has, and we thought we would call it up at this time and see whether they were all standing together on that proposition.

Q. In order that the record may disclose, on its face, a little more fully what this statement is, I will ask you some questions about it. The figures in the column marked "Minnesota" indicate, as I understand it, the amount, expressed in cents, earned per passenger per mile in Minnesota in each of the years indicated?

A. Yes, sir.

Q. That is the amount actually earned and received?

A. Yes, sir.

Q. And, in like manner, the figures in the column marked "Wisconsin" indicate, in cents, the amount actually received per passenger mile in Wisconsin for each year?

A. Yes, sir, the average receipts per passenger per mile.

Q. And so in North Dakota?

A. Just the same.

Q. And now, in all the other states, that means the intrastate business of the other states touched by your System, taken as an average?

A. All the intrastate business, exclusive of Minnesota, Wisconsin and North Dakota.

Q. That is, in Washington, Oregon, Idaho and Montana?

A. Yes, sir.

The MASTER: Of the intrastate business?

Mr. BUTLER: Yes.

The MASTER: Of the other states?

Mr. BUTLER: Yes, sir.

The MASTER: Taken together, but not separately?

Mr. BUTLER: Yes, sir.

Q. That is the fact, Mr. Johnson?

A. Yes; all other states outside of Minnesota, Wisconsin and North Dakota, put into a pot, the general average for all the others.

Q. This does not include any interstate business?

A. Not as far as I know.

Q. Well, it is intended that it should not, and you believe it does not, include any in[illegible]ate business at all?

A. I believe I ought to make an explanation on that point. For a number of years it has been the custom with the Northern Pacific, and, I believe, with other roads, to treat a passenger coming to its line on a coupon ticket at St. Paul, destined, we will say, to Detroit, Minnesota, to classify that business as intrastate business or local business. Now, the investigations that I have made show that if the business was all reclassified, there wouldn't be involved more than about 4 1-2 per cent; therefore, it is my opinion that these figures here do, in reality, represent the average rate per passenger per mile received on the intrastate business.

The MASTER: But if those coupon tickets had been treated as interstate business, there would have been a difference, say, of about 4 1-2 per cent, you think?

WITNESS: In the revenue, yes sir, in passengers one mile; but I don't think it would have altered the average rate per passenger per mile received by the Company.

Mr. DURMENT: But these figures do include, as I understand it, the coupon-tickets such as you mentioned?

WITNESS: Yes, sir.

Q. But in your judgment, the average rate per passenger per mile intrastate, in Minnesota and the other states, as indicated upon the exhibit, would not be substantially affected by the elimination of this coupon business from the mass of the intrastate business in each of the states?

A. No, sir; I don't believe the average rate per passenger per mile would be changed one-hundredth of one per cent.

Q. Now, I observe, for the year 1901, as this exhibit indicates, the average revenue per passenger per mile in Minnesota was 2.299 cents per mile; in Wisconsin 2.758 cents per mile; in North Dakota 2.705 cents per mile; in all other states 2.781 cents per mile.

A. Yes, sir.

Q. That is, in 1901 the average revenue per passenger per mile on local passengers in Minnesota, was lower than upon Wisconsin, North Dakota, or all the other states, considered together?

A. Yes, sir.

Q. That is also true, is it not, in 1902 and each of the other years; that is, in 1902, 1903, 1904, 1905, 1906, 1907, and 1908?

A. Yes; the average rate for the intrastate passenger business in Minnesota is lower than any other state through which the Northern Pacific runs.

The MASTER: Does this 1908 business include the two-cent fare rate?

Mr. BUTLER: That is the revenue actually received for the period covered.

The MASTER: This represents actual results?

Mr. BUTLER: This represents actual results.

Mr. HOW: The entire year of 1908 was covered by the two-cent fare. The year 1908 is the year ending June 30, 1908.

Q. Mr. Johnson, did you also prepare a statement showing the comparative effect of the reductions in intrastate passenger rates on volume of intrastate passenger business, fiscal years ending June 30, 1901 and 1907?

A. Yes, sir, it is a comparison.

Q. A comparison between 1901 and 1907?

A. Yes, sir.

Statement produced by witness marked "Complainant's Exhibit 56—Johnson."

Q. Is the paper marked Ex. 56—Johnson the paper referred to in your last answer?

A. Yes, sir.

Mr. BUTLER: It is offered in evidence.

Q. By way of explanation of this paper, it shows for the year 1901 and the year 1907, the number of passengers carried one mile locally in Minnesota, in Wisconsin, in North Dakota, and in the other states taken together; am I right?

A. Yes, sir.

Q. And also the average rate per passenger per mile, in cents, in each of these years, in each of these states, and in the other states—

A. Yes, sir.

Q. —taken as one. And also the maximum rate per passenger per mile in 1901, and the average collected in 1907 in each of the states mentioned, and in the other states taken as one?

A. Yes, sir.

Q. That is to say, the business in 1907, of local passen-

gers carried one mile in Minnesota, increased 44.6 per cent in Minnesota?

A. Over 1901, yes, sir.

Q. And 31.9 per cent in Wisconsin?

A. Yes, sir.

Q. And 245.3 per cent in North Dakota?

A. Yes, sir.

Q. And 173.5 per cent in the other states taken together?

A. Yes, sir.

Q. And the average rate in 1907 as compared with 1901 decreased in Minnesota 4.4 per cent?

A. Yes, sir.

Q. In Wisconsin .5 of one per cent?

A. Yes, sir.

Q. In North Dakota .8 of one per cent?

A. Correct.

Q. And in the other states, taken together, 4.6 of one per cent?

A. Not of one per cent, 4.6 per cent.

Q. 4.6 per cent. In 1901, the maximum rate charged for any passenger was three cents per mile?

A. Yes, sir.

Q. In Minnesota, in Wisconsin and in North Dakota and in the other states?

A. Yes, sir, the local maximum rate was three cents all over the line at that time.

Q. And that was the highest rate charged?

A. Yes, sir, as far as I know.

Q. And in 1907, the average rate per local passenger per mile in Minnesota was 2.197 cents?

A. Yes, sir.

Q. And in Wisconsin 2.743 cents?

A. Yes, sir.

Q. And in North Dakota 2.682 cents per passenger per

mile?

A. Yes, sir.

Q. And in the other states, taken together, 2.654 cents?

A. That is true.

Q. And the difference in percentages of the maximum rate of 1901 compared with the actual earnings per local passenger per mile is indicated in the bottom row of figures?

A. Yes, sir.

Q. Being 26.7 per cent in Minnesota, 8.6 per cent in Wisconsin, 10.6 per cent in North Dakota, and 11.5 per cent in the other states taken together?

A. Yes, sir.

The MASTER: Do I understand that these figures include passengers carried free?

WITNESS: No, sir.

The MASTER: But they do include cut-rates?

WITNESS: It is the sum of the revenue divided by the passengers carried one mile, except that we do not include in passengers carried one mile the free passengers. We do, however, include such revenue as we derive from construction forces. We carry our own construction men, you know, and we make bills against our construction department. That all goes in on the average rate.

The MASTER: It includes commutations and half-fares?

WITNESS: Commutations, yes, sir.

Q. Excursions of all kinds, state fairs, and the like?

A. Yes, sir; all the passenger revenue of the Company, divided by the passengers carried one mile, regardless of the rate.

Q. But the figures under the caption, "Passengers Carried One Mile" do not include free-pass passengers?

A. No, sir.

The MASTER: That is true of all these exhibits, wherever it is applicable?

WITNESS: Yes, sir.

Q. In all of the statements, where you refer to passengers carried one mile, the figures given do not include the mileage of free-pass passengers?

A. No, sir.

Q. Mr. Johnson, have you also prepared a statement of passengers carried one mile in Minnesota divided as between the intrastate and interstate; also, for the balance of the System for the fiscal years ending June 30, 1907, and 1908?

Witness produces statement marked "Complainant's Ex. 57—Johnson."

Q. The paper marked Complainant's Ex. 57—Johnson is the paper referred to in your last answer, is it not?

A. Yes, sir.

Mr. BUTLER: It is offered in evidence.

Q. This shows that in 1908, as compared with 1907, the passengers carried one mile locally in Minnesota increased 11.8 per cent?

A. Yes, sir.

Q. And carried interstate in Minnesota, increased 8.9 per cent?

A. Yes, sir.

Q. And that the passengers carried one mile on the rails within the state of Minnesota, both local and interstate passengers, increased 9.9 per cent?

A. Yes, sir.

Q. And the last figure, "Other Than in Minnesota," does that mean all of the business of the System outside of the state of Minnesota, including both business local to the other states and interstate business outside of Minnesota?

A. Yes, sir.

Q. That increased 9.9 per cent?

A. 9.9 per cent, measured by passengers carried one mile.

Q. So that the increase of business in Minnesota, meas-

ured by passengers one mile, was exactly the same in percentage as the increase on the rest of the System?

A. It was, yes, sir.

Q. Have you also prepared a statement showing passengers carried one mile and revenue, August 1, 1907, to April 30, 1908, compared with the same period one year previous, illustrating the comparative effect of the two-cents-per-mile passenger rate in Wisconsin and Minnesota, two and one-half cents in North Dakota, and three cents in all other states?

A. I have, yes, sir.

Q. Produce the statement and we will have it marked.

Witness produces statement marked "Complainant's Ex. 58—Johnson."

Q. The paper marked Complainant's Ex. 58—Johnson is the statement referred to in your last answer?

A. Yes, sir.

Mr. BUTLER: It is offered in evidence.

Q. The effect of this statement is to compare nine months of a period commencing August 1, 1907, after the passenger reductions in Wisconsin, Minnesota and North Dakota, with nine corresponding months of the previous years?

A. Yes, sir.

The MASTER: Do I understand him to say to commence August 1, 1906, to April 30, 1907?

Mr. BUTLER: Yes.

WITNESS: Yes, sir, first year.

The MASTER: And then comparing August 1, 1907, to April 30, 1908, taking the same nine months?

Mr. BUTLER: The same months of different years. In one period of nine months the rates had been reduced in Minnesota, North Dakota and in Wisconsin, and in the other nine months there had been no reduction at all; three cents was the maximum rate in all the states.

WITNESS: That is true, yes.

Q. Have you in mind the date that the two-cent rate became effective in Wisconsin?

A. No, I haven't.

Q. It was before August 1st, at any rate?

A. It was before August 1st.

Q. The first reduction in Wisconsin was from three to two and one-half cents, by the Commission, and thereafter the legislature reduced to two cents in Wisconsin?

A. Yes, that is my understanding.

Mr. BUTLER: That is the fact,—of which the Court takes notice, I think.

Q. In Dakota the reduction was from three to two and one-half cents, where it stands now?

A. As of July 1, 1907, as I understand it.

The MASTER: In Minnesota, I understand, the rate was put in just as soon as the law took effect, May 1st?

WITNESS: Yes, sir.

Mr. BUTLER: Yes, it was a felony not to put it in, and penitentiary for five years. At that time it was a felony.

Mr. DURMENT: The Supreme Court of the United States says it wasn't.

The MASTER: Entirely harmless now.

Mr. DURMENT: The Supreme Court of the United States says it was always harmless, never had any effect or validity.

Q. Now, as I read this statement, Mr. Johnson, it shows that the local passengers carried one mile, increased in the later period, over the former one compared, 7.2 per cent.

A. In Wisconsin, yes.

Q. In Wisconisn; and that the revenue decreased 15.9 per cent?

A. Yes, sir.

Q. In Minnesota, the passengers carried one mile in-

creased 19.8 per cent?

A. Yes, sir.

Q. And the revenue decreased 1.1 per cent?

A. That is true.

Q. In North Dakota, the passengers carried one mile increased 24.6 per cent, and the revenue increased 10.2 per cent?

A. Yes, sir.

Q. In the other states, taken together, the passengers carried one mile increased 12.1 per cent, and the revenue increased 18 per cent?

A. Yes, sir.

Q. And, taking all of the states together, the passengers carried one mile increased 15.4 per cent, and the revenue increased 13.6 per cent?

A. Yes, sir.

Q. That relates to business local to each state, intrastate business, in the various states touched by your Company?

A. Yes, sir, intrastate business.

Q. Now, the next subdivision of your statement relates to interstate business carried within Wisconsin, Minnesota, North Dakota and all the other states taken together?

A. Yes, sir.

Q. And shows that such interstate business increased in the later, over the former period compared, passengers carried one mile, 16.8 per cent?

A. In Wisconsin.

Q. In Wisconsin; while the revenue in Wisconsin decreased 4 per cent?

A. .4 of one per cent.

Q. .4 of one per cent?

A. Yes.

Q. Very little change in the revenue?

A. Very little change.

Q. In Minnesota, the interstate passengers carried one mile increased 10.1 per cent, but the revenue increased but 5.4 per cent?

A. That is true. And I think that, right here, I ought to make an explanation. You will note there is a star against that item. It has been the custom of the Northern Pacific, for years, to divide all revenue, both passenger and freight, on a mileage basis, and this has been done as applied to this particular statement, notwithstanding that, in some cases, we might be conceding to Minnesota, on the interstate business, in excess of the maximum rate of two cents per passenger per mile. Now, an investigation (as shown by the foot-note on the statement) demonstrated that if Minnesota was limited to the maximum of two cents, instead of having an increase of 5.4 per cent in the revenue on the Minnesota interstate passenger business, there would in fact have been a decrease of 2.7 per cent in the revenue.

Q. That is to say, when you make a division between your Company and other companies of through fares—

A. Yes, sir, interstate fares.

Q. —if the division had been made on the basis of the two-cent maximum, it would have turned out to be a loss in revenue instead of 5.4 per cent increase?

A. Yes, sir, there would have been a decrease of 2.7 per cent on the Minnesota interstate passenger revenue.

Q. Now, in North Dakota, the interstate passengers carried one mile increased 11.3 per cent, and the revenue increased 14.7 per cent?.

A. That is true.

Q. And in all the other states, taken together, the interstate passengers one mile increased 18.1 per cent, and the revenue increased 20.9 per cent?

A. Yes, sir.

Q. And, taking them all together, so far as the interstate

is concerned, the passengers carried one mile increased 15.3 per cent and the revenue increased 16.6 per cent?

A. Yes, sir, that is true.

Q. Now, the next subdivision of your statement relates to the local and interstate passenger business in Wisconsin, Minnesota, North Dakota and all the other states taken together?

A. Yes, sir.

Q. On the same plan as the first two subdivisions?

A. Yes, sir. In other words, it covers the entire business of the Company.

Q. And shows, for example, that passengers carried one mile on the rails in Wisconsin, in the later period compared with the earlier one, increased 12.3 per cent, and the revenue decreased 7.1 per cent?

A. Yes, sir.

Q. In Minnesota the passengers carried one mile, of both classes, increased 13.3 per cent, and the revenue increased only 3.1 per cent?

A. Yes; and that ought to be qualified by the foot-note on the statement as to the plan of subdividing revenue on the interstate business. In other words, there is an overallowance to Minnesota on the revenue.

Q. That is, as it is divided upon this statement, it gives Minnesota more than its fair proportion?

A. Measured by the maximum of two cents per passenger per mile.

Q. Have you also prepared a statement showing reduction in passenger revenue, based on the loss on Minnesota intrastate business, applied to the intrastate business for the entire line, and based on the loss on interstate passengers carried in Minnesota applied to the interstate passenger business of the entire line, for the fiscal year ending June 30, 1906?

A. I have, yes, sir.

Witness produces statement marked "Complainant's Ex. 59—Johnson."

Q. Is the exhibit marked 59 the one to which you referred in your last answer?

A. Yes, sir.

Mr. BUTLER: It is offered in evidence.

Q. Now, Mr. Johnson, I think I will ask you to explain how that exhibit was made up and what you intended to show thereon.

A. The first item under the caption of "Interstate Passengers in Minnesota on Traffic Affected," is the reduction in the revenue between what the Company could have collected at a maximum rate of three cents per passenger per mile and what it could collect at two cents maximum; the reduction in the revenue was then applied to the amount of business involved and a percentage arrived at. The same plan was used in arriving at the reduction on all passenger traffic in the state of Minnesota.

Q. Including the local and interstate?

A. Including the local and the interstate within the state of Minnesota.

Q. Now, to what mileage did you apply the two-cent maximum to get your first figure of $211,193.48; was that the mileage of the Minnesota interstate passengers for the fiscal year ending June 30, 1906?

A. No, that was not the mileage; the $211,193.48 to which you refer is the revenue that the Company collected at the two-cent maximum.

Q. That is, in the year 1906, the Company actually collected certain three-cent fares, the three-cent law was then in force?

A. Yes, in 1906.

Q. And did they collect, on the interstate passengers in Minnesota, the $308,428.18?

A. No. It will be necessary for me to make this more clear to you. An analysis of the business was made for the months of May and June, 1907, two summer months; and January and February, 1908, two winter months. The analysis disclosed the business that the Company carried at two cents per passenger per mile or more, and on which it could have collected the maximum of three cents had that maximum been in effect, the difference between the two being the $97,234.70.

Q. That is, considering those to be fairly representative months?

A. Yes, sir.

Q. And were they such representative months, in your opinion?

A. In my opinion they were.

The MASTER: That is, you applied the two-cent rate to that business for those months?

WITNESS: No, we took all the business on which we collected two cents or more.

Q. And reduced it to two cents?

The MASTER: That is what I say, you applied the two-cent rate to that business?

WITNESS: No. You will note that I have heretofore stated that these figures are arrived at by an analysis of the business in May and June, 1907, and January and February, 1908, during which four months the two-cent maximum passenger rate was in effect. Now, we determined the amount of business that would be affected, and then set it up to three cents per passenger per mile, and then determined what we would have collected for that business on the maximum of three cents, compared with what we did get at the two-cent maximum.

The MASTER: Well, the two cents or more, you said, I think, didn't you?

WITNESS: No, on the intrastate business we could not possibly collect more than two cents. In other words, the whole exhibit is based on the difference between what the Company could have collected at the three-cent maximum and what it did collect at the two-cent maximum. Now, the figures are shown on two different bases, first, on the traffic that was affected; that is to say, the traffic that paid two cents or more, and on which the Company could have collected three cents under the old maximum rate.

Mr. DURMENT: Just here, I notice you say down here in your explanation "would" instead of "could." Which do you mean?

WITNESS: Where is that?

Mr. DURMENT: "By traffic affected" is meant "the business on which the Company would under the old rates have collected the maximum of three cents per mile." It is your first explanation on that page.

WITNESS: The Company *would* have collected—could and would.

Mr. DURMENT: Well, now, do you mean one or both?

WITNESS: Both.

Mr. DURMENT: Would and could, eh?

WITNESS: Yes, sir.

Q. And that the reduction in revenue on that account was $97,234.70 on the interstate passenger business in Minnesota?

A. Yes, that was affected.

Q. That was affected; and that the percentage of reduction on the revenue affected by the change was 31.52 per cent?

A. Yes, sir.

Q. Now, on all of the interstate traffic the loss is the same but the percentage of the whole is only 16.36 per cent?

A. That is true, and that is brought about by the fact that a large proportion of the business was not affected.

That is to say, we could not have collected three cents on it.

Q. Anyway, had there been no change?

A. No.

Q. Now, the Minnesota intrastate passengers on the traffic affected, will you explain that subdivision of the statement?

A. That is exactly the same as the traffic affected under the interstate business; that is to say, it is the business on which the Company could have collected the three-cent maximum, and the loss would have been $147,261.59, or 32.03 per cent of the traffic affected.

Q. Now, the note following there is explanatory of the months selected as representative months for the analysis?

A. Yes, sir.

Q. The average rate per passenger per mile in 1906 was 2.406 cents per passenger per mile?

A. On the Minnesota intrastate passenger business, yes, sir.

Q. And in 1908 it was less than two cents, being 1.930 cents?

A. Yes, sir; and, of course, it is less than two cents because the Company has to meet short-line rates, and it includes the commutation business at less than two cents.

The MASTER: When you say in 1906 you refer to June 30, 1906?

WITNESS: Yes, sir.

Q. You refer to the fiscal year?

A. Yes, sir.

The MASTER: Ending June 30, 1906?

WITNESS: Yes, sir.

Q. So that the rate per passenger per mile was reduced 19.78 per cent?

A. Yes, sir.

Q. The next subdivision of your statement is the result

of the application of the foregoing results to the business for the year ending June 30, 1906?

A. Yes, the calculations are made on two bases: One, on the business affected, and the other on all business; showing that the loss on the basis of business affected would be, for the entire line, $4,372,321.61.

Q. That is extending the Minnesota loss to the business of the whole line?

A. Yes, sir, and as a measure of reduction in the revenue for the fiscal year ending June 30, 1906, we use the smaller percentages, which yield a reduction on the entire System of $2,435,864.17. Of course it may be well to state that as we didn't collect more than those average rates, we certainly could not lose more than that, as applied to that particular year.

Q. As I catch this last statement, it is this: In 1906 the intrastate passenger business on your line amounted to $4,959,094.16?

A. Yes, sir.

Q. If that had been reduced 32.03 per cent, the amount of reduction suffered in Minnesota by the change of rate, as you have heretofore explained, the loss on that intrastate business on the whole line would be $1,588,397.86?

A. Yes, sir.

Q. Or, if there were applied only the percentage 19.78 per cent, which is the percentage of reduction of the average rate per passenger per mile in Minnesota, the loss would be less than $1,000,000, namely $990,908.82?

A. Yes sir.

Mr. How: That is, the amount actually received rather than the maximum amount?

WITNESS: Actually received, yes.

Mr. How: In one column it is applied against the maximum amount, and in the other against the amount actually

received by the Company under the maximum law.

Q. Now, the interstate business for that year on your line was over eight millions, $8,832,245.41?

A. Yes, sir.

Q. Now, if there be applied to that the 31.52 per cent first appearing above as the reduction on the Minnesota interstate business (that is, the percentage of reduction on the business affected by the change) the loss would extend to $2,783,923.75?

A. Yes, on the interstate business for the entire line.

Q. And if you apply the 16.36 per cent (which is the reduction on the Minnesota interstate business, affected and not affected, taking the whole together and applying the amount of loss) will extend to a loss of $1,444,955.35?

A. Yes, sir, or it may be more clearly stated by a reduction in the revenue for that year.

Q. And totaling those, if you apply the higher percentages (that is, the percentages of the loss on the revenue affected by the change) the aggregate loss would be over $4,377,000, and if you apply the percentages of loss on all of the revenue, taken separately, the interstate and intrastate, the aggregate loss would be over $2,435,000?

A. Yes, sir.

Q. Mr. Johnson, have you prepared a table illustrating the principle embodied in the Minnesota legislative reasonable maximum commodity rates and Minnesota Railroad & Warehouse Commission reasonable maximum merchandise and class rates, of adding a constant hauling charge after a certain distance is reached?

A. Yes, sir.

Witness produces statement marked "Complainant's Ex. 60—Johnson."

Q. The paper marked Ex. 60—Johnson is the one you refer to in your last answer?

A. Yes, sir.

Mr. BUTLER: It is offered in evidence.

Q. Now, there is attached to the bill of complaint in this case a copy of the schedule of reasonable maximum terminal and distributing merchandise rates of September, 1906; that is the schedule to which reference is made in this Ex. 60?

A. Yes, sir.

Q. At the distance of four hundred miles the class rates basing on first class 69.82 cents per hundred pounds?

A. Well, in the exhibit I use 69.8.

Q. Yes, you didn't carry the decimal quite so far?

A. No, I didn't carry it beyond one decimal point.

Q. And the other classes bear the relation expressed in the caption in percentages?

A. Yes, sir.

Q. Extended through. And that five hundred miles, the allowance for the first class is 74.72?

A. I have it 74.7, but it would not materially affect the result.

Q. This statement shows the allowance for one hundred miles in cents per hundred pounds?

A. Yes, sir.

Q. The amount allowed per ton per mile expressed in mills?

A. Yes, sir.

Q. That is, for a hundred pounds of the first class, for one hundred miles, there is allowed for the one hundred miles between four hundred miles and five hundred miles, 4.9 cents?

A. Per hundred weight, yes, sir.

Q. And, running down to Class E, nine-tenths of one cent?

A. Yes, sir, nine mills.

Q. Or, for a ton per mile, in mills, there is allowed for the first class 9.8 mills?

A. Yes, sir.

Q. Per ton per mile; and running down to Class E (the lowest class), there is allowed 1.8 mills per ton per mile?

A. Yes, sir.

Q. Or one hundred miles, one ton, for 18 cents?

A. That is true.

Q. And the next subdivision of that statement shows the same thing with respect to the distance, merchandise and class rates allowed by the Commissioners' order?

A. Yes, sir.

Q. And is an increase of substantially five per cent over the terminal merchandise and class rates?

A. Substantially five per cent, yes, sir.

Q. And the third subdivision of this exhibit refers to the commodity rates specified in the act of April, 1907?

A. Yes, sir, the act of the legislature.

Q. And shows the allowance per hundred pounds for one hundred miles, and the allowance per ton per mile for the hauling charge at distances between three hundred and four hundred miles?

A. Yes, sir.

Q. Mr. Johnson, have you made a statement showing the rates per ton per mile October, 1905, and April, 1906, combined, compared with the average rates per ton per mile on various commodities and merchandise, for the fiscal year ending June 30, 1906?

A. I have, yes, sir.

Witness produces statement marked "Complainant's Ex. 61—Johnson."

Q. Is the paper marked Ex. 61 the paper to which you refer?

A. Yes, sir.

Mr. BUTLER: It is offered in evidence.

Mr. BUTLER: Now, your Honor, the purpose of this exhibit is to justify the basis used in an exhibit hereafter to be intro-

duced for the purpose of showing that the months of October, 1905, and April, 1906, taken together, are fairly representative of that fiscal year.

Q. And, Mr. Johnson, I would like to have you explain how the exhibit is made up.

A. The exhibit was made up for the purpose of demonstrating that using the months of October, 1905, and April, 1906, as a basis for computing the loss, could not possibly be far out of the way. You will note that the average rate per ton per mile on the commodities in question—

Q. Well, in the first place, take grain, for example. You have grain?

A. Grain.

Q. Now, there were, in these two months of October and April, 160,000,000 plus ton miles of grain?

A. Yes, sir.

Q. A revenue of $1,287,000 plus, derived from it?

A. Yes, sir.

Q. Yielding a rate per ton per mile, in cents, of .787 on your grain; and the same rate per ton per mile, in cents, for the whole fiscal year, on the same commodity, was .816 of a cent?

A. That is true.

Q. To what traffic does that refer—Minnesota or the—

A. No, the entire line.

Q. For the entire line?

A. Yes, sir.

Q. And livestock shows ton miles of over 33,000,000, and earnings of over $402,000?

A. Yes.

Q. The rate per ton per mile for the whole year was 1.209 cents?

A. Yes

Q. And so on, throughout the various commodities, indi-

cating a reasonably close rate per ton per mile against each for the two months as compared with the whole fiscal year?

A. That is the idea.

The MASTER: This is for the purpose of showing that we can take those two months as a basis of comparison, instead of taking the whole twelve months in the year?

Mr. BUTLER: Yes.

Q. Now, the labor of revising the way-bills and the business is very great indeed, is it not?

A. To revise all that business for a year would mean that we would have to stop the work in our freight auditor's office; we could not do any other work scarcely, if we undertook to revise a year's business, within the time necessary to bring the evidence here in this case.

Mr. DURMENT: Wasn't it agreed between us, earlier in the hearing, that the months of October and April should be taken as representative months for figuring?

Mr. BUTLER: That may have been. I don't know that there has been any formal agreement about it. I guess there was a kind of common understanding, anyway. I think, perhaps, it may be spoken of as the common law of the case. It is an enormous job to revise this business, and these two months are fairly representative.

Mr. DURMENT: I don't think we will dispute it.

Mr. BUTLER: If there is any point to be made about it, it would be necessary to justify, in the record, the enormous amount of labor involved.

Mr. STAPLES: Our department, outside of the case, did agree with the officials of the Company that those were fair months from the standpoint of both the State and the roads.

Mr. DURMENT: I think you better show, as a matter of form, that they are fair representative months, so it will appear in the record, for the benefit of both of us.

Q. The figures in this Ex. 61 relate to October, 1905, and

April, 1906, as compared with the whole fiscal year ending June 30, 1906?

A. Yes, sir.

Q. And indicate, do they not, in your opinion, that those months are fairly representative of the whole year?

A. Yes, sir, they are.

Q. And would they not, in your opinion, be fairly representative of any year?

A. They would.

Q. Any fiscal year; that is, the months of October and April in any fiscal year, you think, would be fairly representative of that fiscal year?

A. Yes, sir.

Mr. DURMENT: That would be true as to Minnesota and the separate states as well as to the entire line, would it not?

Q. Do you think that would be true as to all of the states and the line taken as a whole?

A. Yes, sir, I do

Recess until 2 P. M.

AFTERNOON SESSION

Q. Mr. Johnson, did you request of counsel for the Complainant, and for the purpose of showing the effect upon revenue of your Company, as referred to in subdivision 13 of the Bill, make a "Statement showing the revenue that was received from commodities included in the tariff prescribed by act of the legislature of the state of Minnesota, approved April 18, 1907, also merchandise and class rate business included in the orders of the Minnesota Railroad & Warehouse Commission, September 6, 1906, and May 3, 1907; the percentage of loss that would have resulted by application of the maximum rates included in said act and orders, or extension of such rates upon the principle of said tariffs, and

the loss of revenue that would have accrued in the fiscal year ending June 30, 1906?"

A. I have.

Q. Produce it and we will have it marked. Is the paper which has been marked "Complainant's Ex. 62—Johnson," such statement?

A. Yes, sir.

Q. I observe that the first sheet of that statement relates to the following commodities: hard coal, soft coal, wheat, flax and flour, coarse grain, lumber and shingles, cattle and sheep, hogs, merchandise and class rate business; these include all of the commodities intended to be referred to in the caption?

A. Yes, sir.

Q. The sheet marked "62-A" is, as I understand it, an analysis of the hard coal business for the two representative months of the fiscal year ending June 30, 1906; that is, the months of October, 1905, and April, 1906?

A. Yes, sir.

Q. Will you explain how that sheet 62-A was made?

A. To the Minnesota intrastate hard-coal business for October, 1905, and April, 1906, we applied the rates included in the Minnesota legislature's commodity tariff, determined the reduction in revenue and applied the same ratio of reduction to the intrastate business hauled up to 300 miles. To the interstate commodity business for the same months hauled over 300 miles we applied the legislative rates, or those rates extended on the principle embodied in said tariff, by adding a constant hauling charge after a certain distance is reached. Then we arrived at the loss for those two months and determined the percentage based on affected business and also based on all the business; we then applied those percentages to the total hard-coal business for the entire fiscal year ending June 30, 1906.

Q. Now, somewhat more in detail,—under the caption Minnesota Local Business, "substantially none of this is hauled over 300 miles." In the column Total Revenue is "$3,104.90." What does that mean, and where did you get it?

A. Taken from the records of the Company.

Q. That means what?

A. That is the total revenue that the Company collected on shipments of hard coal, intrastate in Minnesota.

Q. For those two months?

A. For the months of October, 1905, and April, 1906.

Q. Now, following that line to the right, explain each item as you go along.

A. It is necessary to refer to the general caption reading Total Affected Business in following the subsequent items. The $1,598.37 is what we collected on hard-coal business, which would be subject to the reduction by the new rates. The Company, however, voluntarily reduced, in October, 1906—

Q. Their coal rates?

A. Their coal rates, yes.

Q. Which would have affected how much of the revenue?

A. It would not have affected any of the revenue as far as the local for the state was concerned. Under the legislative tariff we would have collected $1,512.67, or $85.70 less than under the old rates, equivalent to a reduction of 5.36 per cent.

Q. Of the revenue affected by the change?

A. Of the revenue affected by the change.

Q. Or—

A. Applying the loss to the whole revenue from hard-coal business within the state of Minnesota.

Q. That is, to the $3,104.90?

A. To the $3,104.90; the percentage of reduction would have been 2.76 per cent.

Q. And follow the next line in the same way, if you will.

A. On the next line we show the interstate business hauled over 300 miles, the total revenue of which was $22,489.75. The affected business yielded $22,160.34, but under a voluntary tariff, put into effect in October, 1906, we would have received only $22,074.34. Under the legislative tariff, or the principle of said tariff extended to this long-haul business, we would have received $17,810.26, a reduction of $4,264.08.

Q. That is a loss of that amount of money?

A. A loss of that amount, equal to 19.24 per cent of the original revenue.

Q. Affected?

A. Affected revenue; the original revenue from the affected business. Applying this loss of $4,264.08 to the whole amount of $22,489.75 (representing the full revenue from the interstate business hauled over 300 miles) makes the percentage of reduction 18.96 per cent. Now, having arrived at the losses for these two months, we then determined, from our records, how much business we had hauled up to 300 miles, and how much business we had hauled over 300 miles, and applied the percentages shown in the statement.

Q. That is, during that fiscal year?

A. During that fiscal year.

Q. And does that appear on this same sheet?

A. It does.

Q. That is, during the whole fiscal year, of the hard-coal hauled 300 miles or less, the actual revenue received was $57,431.43?

A. Yes, sir; hauled 300 miles or less.

Q. To which you applied, first, the 5.36 per cent, the amount of reduction on the revenue affected by the rates in question?

A. On the intrastate business, yes, sir.

Q. And extend the loss at $3,078.32?

A. Yes, sir.

Q. And then you apply the other percentage, to-wit, 2.76 per cent of the total revenue on hard-coal which would be taken away by the application of the rate, and extend that to be $1,585.11?

A. Yes, sir.

Q. Now, will you explain the next line?

A. On the business hauled over 300 miles—

Q. That is interstate business—

A. Interstate.

Q. I think by a question of mine I misrepresented the exhibit upon the record by saying that the $57,431.43 was the total revenue on hard-coal hauled less than 300 miles in Minnesota for the fiscal year 1906; is that the fact, or is that for the two months?

A. No, the $57,431.43 is the revenue from all the hard-coal business hauled 300 miles, or less, in the months of October, 1905, and April, 1906.

Q. Where?

A. All over the System.

Q. And then to that were extended the percentages as hereinbefore described?

A. Yes, sir.

Q. Now, will you explain the next line?

A. The revenue from hard coal hauled over 300 miles, during the same two months, was $22,489.75, and applying the percentages of 19.24 per cent and 18.96 per cent, as heretofore referred to, we show the losses that would have accrued. Having arrived at the loss on all the hard-coal business for October, 1905, and April, 1906, we are able to determine a fair average percentage of loss, both on affected business and on all business. The total hard-coal business for the fiscal year ending June 30, 1906, produced a revenue of $384,036.38. Applying the average percentage of 9.266 we have a

reduction or loss of $35,584.81. Applying the percentage of 7.319, covering all the business, including the affected business, we have a reduction in the revenue of $28,107.62.

Q. And those are the figures extended into the third and fifth columns on the first line of the first page of the exhibit?

A. Yes, sir; the first page of the exhibit is a summary of the sub-statements.

Q. That is, the first line of the first page is the equivalent of the last line of the second?

A. Yes, sir.

Q. Now, with respect to soft coal, is the sheet "62-B" an analysis of the soft-coal business in the same way as "62-A" was of the hard-coal business?

A. Yes, sir.

Q. And "62-C" is a similar analysis with respect to the wheat, flax and flour?

A. Yes, sir.

Q. "62-D" a similar analysis with respect to coarse grains?

A. Yes, sir.

Q. "62-E" with respect to lumber and shingles?

A. Yes, sir.

Q. "62-F" an analysis with respect to cattle and sheep?

A. Yes, sir.

Q. "62-G" an analysis with respect to the hog business?

A. Yes, sir.

Q. And "62-H" is an analysis with respect to the merchandise and class rates?

A. Yes, sir.

Q. Considered in the aggregate and not by classes separately?

A. In the aggregate.

Mr. BUTLER: Complainant's Ex. 62 is offered in evidence, with the several sub-divisions thereof, 62-A to 62-H, inclusive.

Q. Now, that there may be no misunderstanding in the record from what has been said, the change of rates did not in all instances affect all the business; for instance, the change of rates in hard coal did not affect all the hard-coal movements?

A. No, sir, it did not.

Q. And that explains the different percentages in the revenue from the business affected by taking as a base and comparing with the loss the higher percentages obtained?

A. Yes.

Q. And in the whole revenue derived from all the business on coal, that where the revenue is affected and that where it is not, the lower percentages obtain?

A. Yes, sir.

Q. And that is the explanation of the different rates of the percentages shown in Ex. 62 and the analysis sheets thereto attached?

A. Yes, sir.

Q. Now, extending the higher set of percentages, the loss on the commodities other than the classes, as I read this, would have amounted to $4,982,750.29?

A. It would as nearly as we have been able to compute it.

Q. That is on the basis of the percentages for those two representative months?

A. Yes, sir.

Q. And assuming them to be representatives and applying it to the business of the fiscal year 1906?

A. Yes, sir.

Q. Which would be the equivalent of 23.234 per cent of the revenue derived from these commodities?

A. Yes, sir.

Q. And if the lower percentage be applied, we have a loss of $4,391,823.55?

A. Yes, sir.

Q. The loss on the class and merchandise business is shown, but I think I will call attention, for the purposes of the record, to the total loss. By applying the percentages of loss resulting from the application of the rates to the business affected it would be $11,634,967.53?

A. Yes, sir; or 27.902 per cent.

Q. And applying the lower percentage of loss, which is gotten at by comparing it with the whole revenue, that affected and that not affected, the loss would be $9,464,230.34?

A. Yes, sir.

Q. Or 22.696 per cent?

A. That is true.

Q. Did you also prepare a statement showing the revenue that was received in the state of Minnesota from commodities included in the tariff prescribed by the act of the legislature of the state of Minnesota approved April 18, 1907; also merchandise and class-rate business included in the orders of the Minnesota Railroad & Warehouse Commission of September 6, 1906, and May 3, 1907; the percentage of loss that would have resulted by application of the maximum rates included in said act and the orders, and the loss of revenue that would have accrued in the fiscal year ending June 30, 1906?

A. Yes, sir, I have prepared such a statement.

Q. Is the paper marked "Complainant's Ex. 63—Johnson" the statement you have referred to in your last answer?

A. Yes, sir.

Mr. BUTLER: It is offered in evidence.

Q. By way of explanation, what does the first column of figures show, under the caption Total Intrastate Revenue Collected?

A. It is the revenue collected from the transportation of the various commodities shown on the statement within the state of Minnesota from the purely intrastate business for the year ending June 30, 1906.

Q. And the next column of figures?

A. The next column of figures contains the percentages of reduction, based on the business affected by these changes in rates, and the loss that would have accrued for the year ending June 30, 1906.

Q. Had the rates been in effect?

A. Had the rates been in effect at that time.

Q. Now, under the commodities, that is, the commodities covered by the act of the legislature, the revenue affected would have been reduced by 12.34 per cent?

A. Yes, sir, on the affected business.

Q. And 18.91 per cent on the merchandise and class-rate business?

A. Yes, sir.

Q. And considering them all together, it would have been a reduction of 16.15 per cent?

A. Yes, sir.

Q. On the merchandise and commodities taken as a unit?

A. As a unit.

Q. Now, in dollars, what would have been the loss on the commodities?

A. Based on the business affected, it would have been $77,075.33.

Q. That is, under the commodity act?

A. Under the commodity act.

Q. And, under the merchandise order?

A. It would have been $162,665.58.

Q. Making a total of $239,740.91?

A. Yes, sir, the total based on the affected business.

Q. Now, the percentages in the next column to the last on the page, are the percentages arrived at by applying the loss to the whole revenue derived from the transportation of the commodities, whether affected or not affected by the change of rates?

A. Yes, sir, the whole business, intrastate in Minnesota.

Q. And of the whole intrastate in Minnesota on the commodities, the effect would have been a loss of 3.62 per cent?

A. Yes, sir.

Q. And on merchandise, 11.36 per cent?

A. Yes, sir.

Q. And on all, taken together, 8.11 per cent?

A. Yes, sir.

Q. And applying those percentages to the revenue affected, the figures in the last column are obtained?

A. They are.

Q. I have said that right, have I,—to the revenues affected?

A. To the revenues affected? No, sir, to all the revenues.

Q. Whether affected or not affected?

A. Whether affected or not affected.

Q. That is, you use the same base in both instances but apply a different per cent?

A. That is the idea, yes.

Q. Can you give us what the intrastate passenger revenue for the fiscal year ending June 30, 1906, was in Minnesota?

A. $922,655.03.

Q. And what would have been the loss, based on the traffic as it existed that year, by the application of the 32,300 per cent referred to in your Ex. 59?

A. $295,654.53.

Q. And by the application of the 30.92 per cent referred to in the same exhibit?

A. $285,468.62.

Q. And by the application of the 19.78 per cent referred to in Complainant's Ex. 59-Johnson?

A. $182,580.28.

Q. Have you, at our request, made a statement showing specific items entering into increased cost of operation in

1907 over 1906?

A. I have.

Q. And also of 1908 over the two former years?

A. Yes, sir.

Q. Does the exhibit marked "Complainant's Ex. 64—Johnson" contain the statement referred to in your last answer?

A. It does, yes, sir.

Q. As I understand this exhibit, the first subdivision of it shows the total number of days worked in 1907 by employes of the class indicated in the list at the left-hand side "General Office Clerks or Station Agents, Other Station Men," etc.?

A. Yes, sir, for the fiscal year ending June 30, 1907.

Q. And the next column shows the average daily compensation for the year 1906?

A. For the fiscal year ending June 30, 1906.

Q. And compares it with the increased subsequent fiscal year?

A. Yes, sir.

Q. And a subsequent column shows the percentage of increase?

A. No, sir, the increased compensation per day.

Q. And the last two columns show what?

A. The last column but one shows the average rate paid to employes in these various capacities during the fiscal year ending June 30, 1908; and the final column shows the increase in 1908 over 1906,—showing that wages still continued to rise after 1907.

Q. And into the fiscal year 1908?

A. Into the fiscal year 1908.

Q. The second subdivision of the exhibit shows what?

A. It summarizes the increase in the amount of wages paid by the Company due to the increased rates of pay, as also the additional amounts paid out chargeable to operating expenses for account of increased prices of coal and ties.

Q. Well, with respect to wages it takes the number of hours?

A. Days.

Q. Number of days used by the classes of help referred to, and applies the 1907 rate to the old rate, and gives an increase of $1,029,156.80?

A. Yes, sir.

Q. That is, the same help in 1907 would have cost that much more?

A. Yes, sir; for an equal amount of time.

Q. Than it did in 1906 for an equal amount of time for the same service?

A. Yes, sir.

Q. What does the star there refer to, has that any significance?

A. No, I don't think so.

Q. And the second item of that second subdivision refers to the number of tons of coal used in 1906?

A. Yes, sir.

Q. And applies to it the increased price of 1907 over 1906?

A. Yes, sir.

Q. Which would make an increased cost for the same coal in 1907 over 1906 of $793,812.52?

A. Yes, sir.

Q. And the next item relates to oak ties and tamarack ties and fir ties, all as indicated?

A. Yes, sir.

Q. Indicating an increase in these items mentioned in 1907 over 1906 of $2,042,231.89?

A. Yes, sir.

Q. What was the increased ratio of operating expenses of the fiscal year ending June 30, 1907, over the fiscal year ending June, 1906?

A. 4.178 per cent.

Q. And the gross earnings were $68,447,453.65?

A. Yes, sir.

Q. Making a difference of $2,259,734.61?

A. No, sir, $2,859,734.61.

Q. And the third sub-division of the statement—?

A. The third subdivision of the statement shows the effect of applying the increased rates of pay and increased prices of material in 1908 to the 1907 operating expenses.

Q. That is to say, you take these items which enter into the cost of producing the service in 1907 which did in fact enter into the production of the service in 1907 and apply to them the costs of 1908, and the increase in labor for the class of help indicated in the first subdivision of the exhibit as I understand this statement, would be $2,058,313.60?

A. Yes, sir.

Q. And taking into account coal and ties and adding the amount to this increased labor cost, the increase would be, for 1908 over 1907, $3,344,333.31?

A. Yes, sir. And I may say that that does not embrace all the increases.

Q. I was about to ask you whether there are items of cost of producing the transportation which have increased in price which are not included in this statement.

A. Yes, there are other items, but they covered so many different articles that it was not practicable to get at the information; but I know, in a general way, that the prices of the other material, aside from coal and ties, have increased.

Q. This takes in labor, coal and ties?

A. Labor, coal and ties only.

Q. This includes about all the classes of labor that the Company employes, does it?

A. Yes, sir.

Q. For operation?

A. This is a complete schedule of the employes of the Com-

pany as called for by the Minnesota state report and by the Interstate Commerce Commission report.

Q. That is a subdivision of the employes as prescribed by state and national authority?

A. Yes, sir.

Q. For accounting purposes?

A. For reporting purposes.

Mr. BUTLER: I offer Complainant's Ex. 64 in evidence.

CROSS-EXAMINATION.

By Mr. DURMENT:

Q. Referring to your Ex. 54, as I understand it, in this first column Tons Carried Minnesota Intrastate, that is the total tonnage hauled by your road in Minnesota, that is, carriage begun and ended in Minnesota, during that year?

A. Yes, sir. I want to qualify that with the explanation that I made in direct evidence, that it had been the custom of the Company, and in fact, with a good many railroads, to base the classification of freight on the haul of the Company rather than on the fact of its being carried from a point outside of the state, or, in other words, based on the bill of lading, the entire haul of the shipment within and without the state. For example, a shipment might originate at a point in Wisconsin, be billed locally to Minnesota Transfer, destined to say Detroit, Minnesota; now, that shipment, under the common practice, was classified as a local or intrastate shipment. We made an investigation and found what the percentage of error was in the classification of freight as between intrastate and interstate in that respect, and the figures herein given are the figures, as near as we can possibly arrive at them at this time for the true intrastate business.

Q. How did you arrive at that percentage of error?

A. By an examination of every way-bill for two months.

Q. What two months?

A. October, 1905, and April, 1906.

Q. Then you took what you had theretofore classified as intrastate and deducted from the total of that, as shown by the records for that year, the percentage of error?

A. Yes, sir.

Q. As determined in that way?

A. Yes, sir.

Q. And this Minnesota interstate, 5,398,752, how did you arrive at that?

A. That was arrived at by adding to what we had originally classified as interstate the tonnage that had been erroneously classified as intrastate, so that the sum of both, or 6,845,368 tons carried, is the total tonnage carried in Minnesota.

Q. What did you find to be the percentage of error in the intrastate business, as you calculated it, on those two months?

A. I don't believe I have the figures with me, but to the best of my recollection it was about 58 per cent.

Q. About 58 per cent?

A. About 58 per cent.

Q. That is, that it was that much too large?

A. That much too large.

Q. Then this 1,446,616 tons is substantially 42 per cent of what under the method you had formerly used, would be classed as intrastate business?

A. Yes, sir, approximately.

Q. Then how did you arrive at your average haul of 96.6 for Minnesota intrastate business on this Exhibit 54?

A. The analysis I heretofore referred to of October, 1905, and April, 1906, took into consideration not only the tons carried but also the tons one mile and the revenue, being all the factors in connection with the business. Having arrived at the true intrastate tons carried and the true intrastate tons one mile, then it necessarily follows that the latter, divided by

the former, produces the true average haul of intrastate business in the state of Minnesota.

Q. But I don't quite understand how you arrive at the true number of tons hauled one mile on Minnesota intrastate business, as shown in this schedule.

A. I have just stated that we not only in this analysis recomputed the tons carried, but also the tons one mile.

Q. Well, I know you stated you did it, but how did you do it? What did you take into account to arrive at those figures?

A. Revised the tons carried (the tons one mile) for those two months, that is, October, 1905, and April, 1906, and arrived at the percentage of error. We applied those percentages of error, both as to the tons carried and the tons one mile, to the business for the whole year, as being representative months.

Mr. BUTLER: Took each way-bill?

WITNESS: Each way-bill, yes.

Q. For those two months?

A. Yes, sir.

Q. And did you use the same percentage of error for the tons one mile that you did for the tons carried?

A. No, sir.

Q. What percentage of error did you use for the tons one mile?

A. I don't recall now. As I have heretofore stated, I didn't bring that statement with me, or I could very readily answer your question.

Q. Well, you can give it to us tomorrow, I suppose?

A. I can, yes, very readily.

Q. Well, then, if I understand it right now, you took these two months April and October, in the years you have spoken of, and you found the actual tons one mile of the interstate business you theretofore classified for those months in intrastate business?

A. No, the reverse of that. We found out what the true intrastate business was.

Q. The true intrastate business?

A. Yes, sir, and at the same time, we were bound to find out what the true interstate business was.

Q. Then you got the actual tons one mile intrastate business for those two months?

A. As nearly as can be arrived at by applying these percentages.

Q. But that is what I am trying to get at, is as to how you got your percentage.

A. Through an actual revision of the way-bills.

Q. Just explain the process in detail to me, will you?

A. Why, we took every way-bill that we had classified as intrastate business, examined that way-bill, examined the interline reports (and by interline reports I refer to the freight that is carried on through billing) and ascertained what shipments were absolutely intrastate shipments. We found out how much tonnage there was and how many tons one mile and what the true revenue was.

Q. That is, on interstate and intrastate?

A. Both.

Q. On both?

A. Yes, sir.

Q. Then, having the actual tonnage on intrastate for those two months, how did you arrive at the result for the year on intrastate business?

A. By applying the percentages to the whole year's business.

Q. Now, then, I haven't yet got into my head just how you got your percentage.

A. As the business had been classed, we knew what the total tons carried were and what the total tons one mile were that we had classed as intrastate business; we analyzed that

business for two months to determine the percentage of error that we had made in classifying intrastate business that was properly interstate business; having arrived at those percentages for the tons carried and the tons one mile and the revenue, we applied those percentages to each factor for the entire year's business.

Q. Now, it is very clear to my mind how you arrived at your percentage for the tons carried; that you have made clear to me, and if I had the material before me it is so clear that I could go ahead and figure it out myself; but, from anything you have told me, I wouldn't be able to figure out your result of 139,737,586; that is, the percentage that you used to get that.

A. We used the percentage that was arrived at from an analysis of the business for October, 1905, and April, 1906, as respects the tons of freight carried one mile. We did not use the same percentage of error in connection with the tons one mile as we did with the tons carried.

Mr. DURMENT: (After conferring with witness). Upon this point, I am going to ask Mr. Johnson (he says he has it) to produce here the figures or calculations upon which he arrived at his percentage of error in tons one mile for April and October of the years mentioned.

Mr. BUTLER: That is of the fiscal year 1906.

The MASTER: Is there any objection to his making it, also, for the tons carried, and take the whole thing right through? I think I understand that, but at the same time I would like to have it right before me so I can see exactly how he gets at it.

Mr. DURMENT: I am not clear that I understand the tons one mile, from my talk with Mr. Johnson, even, and I didn't seem to be able to make myself clear to him and he doesn't to me, and he says he will bring those calculations, from which we can see just how it was done.

WITNESS: All right.

Q. Taking the passenger business on Exhibit 54, as I remember this Minnesota intrastate business, the figure 1,192,002 passengers, includes a certain number of passengers which you would now classify as interstate?

A. No, sir, not in that figure; that is true intrastate business.

Q. How did you arrive at that true intrastate business, then, for that?

A. By an examination of several months, to determine the percentage of error in the number of passengers carried and the number of passengers carried one mile, that had been originally classified as intrastate and in reality were interstate, the passengers having traveled on a ticket on an interstate trip, as demonstrated by the transportation that they held.

Q. Then this figure 1,192,002 passengers is not determined from an actual count for the year, but you took the total number of passengers which you had classified as intrastate business before, then you examined these two months April and October—

A. No, sir, there were several months; I think at least four months were examined as regards the passenger business.

Q. And figured the percentage of error?

A. Yes, sir.

Q. In those months because of interstate business included under the old classification?

A. Being included or shown as intrastate business.

Q. And you deducted that from the old figure of the intrastate?

A. Yes, sir.

Q. Then how did you arrive at your Minnesota interstate?

A. By adding to what we had originally classified as interstate the passengers carried that had been erroneously classified as intrastate who were in fact interstate.

Q. Well, my recollection is that this morning, on your di-

rect examination, you said that this 1,192,002 contained certain interstate which you had theretofore classed as intrastate, but it made no difference in the result, practically?

A. No, sir, I don't believe I stated that.

Q. That was with reference to another exhibit, then, was it?

A. I think it must have been.

Q. Now, turning to your Exhibit 55, which is a showing of the average rate per passenger per mile in Wisconsin, Minnesota, North Dakota and other states, during a number of years, I find in the last column the average rate for all states other than the three specifically mentioned; that would include Washington, Oregon, Montana, Idaho,—any others?

A. No others, except, I think, that there was some Manitoba business in there, perhaps back in 1901; I am not sure of that, though.

Q. Do you know whether the rates per passenger per mile, on the average, in any one of those states, included under the head of All Other States was less in any year shown on this exhibit than the average in Minnesota?

A. I think not.

Q. Well, do you know?

A. Yes, I feel sure of it.

Q. Were they less than the average rates in any year, either in Wisconsin or North Dakota?

A. I cannot say as to that.

Q. If you will, turn to Exhibit 56, please. In the year 1901, the intrastate passengers carried one mile in Minnesota were about twenty times as many as in Wisconsin, weren't they?

A. Practically, yes, sir.

Q. And about four times as many as in North Dakota?

A. Yes, sir.

Q. In 1907, the number of passengers carried one mile in

Minnesota was more than twenty times as great as the number carried in Wisconsin?

A. Yes, sir; but then you must take into consideration the difference in the mileage of the road in those two states.

Q. That is all right, it was greater in number?

A. Oh, yes.

Q. And it was still very much larger than in North Dakota?

A. Yes, a little over fifty per cent greater.

Q. In other words, there had been an increase in passengers carried in Minnesota in those six years of 44.6 per cent?

A. Yes, sir.

Q. While in Wisconsin it had only been 31.9 per cent, but in North Dakota it had been 245.33 per cent?

A. Yes, sir.

Q. It was testified by Mr. Cleland, as I remember it, that the aim in making interstate rates, was to make them equal to the sums of the local hauls in the different states which went to make up the interstate, and that that was done except in cases where there was competition or some peculiar circumstance which made it necessary to make a different rate. Now, I gather from your testimony, that that is the theory you have proceeded upon?

A. No, sir, I have not proceeded upon any theory at all.

Mr. BUTLER: What is the question, Mr. Durment?

Mr. DURMENT: That if, in the main, in making his figures here, he has not proceeded upon the theory that the interstate rates must be at least equal to the sum of the locals in the different states that go to make up the interstate haul.

Mr. BUTLER: Which exhibit did you have?

Mr. DURMENT: I haven't any one in mind specially.

Mr. BUTLER: I think you must be misled, because this refers to intrastate business.

Mr. DURMENT: Well, there was some interstate.

Mr. BUTLER: There may be some there, but I don't think—Read you question now and see if you yourself think that that asks anything.

The question was read.

Q. This question refers entirely to passenger rates, not to freight.

A. I haven't taken into consideration anything except the bare facts that were shown by the records of the Company. I am not a traffic man, and I don't make rates.

Q. On what other theory, then, would you reduce or make your losses on interstate business, the reduction of your locals?

Mr. BUTLER: Now, Mr. Durment, what question or exhibit that we have introduced is that cross-examination to?

Mr. DURMENT: Well, this cross-examination is as to the whole matter, and it is based upon some things that are in some of the statements and not of others.

Mr. BUTLER: Well, this is an accounting officer—who doesn't make rates any more than I do.

Mr. DURMENT: Well, that may be, but he has made some tables and he has testified to them here.

Mr. BUTLER: Yes, and my point is that the question doesn't touch any tables.

The MASTER: That is, you would like to have his attention called to the particular exhibit?

Mr. BUTLER: Certainly.

The MASTER: Where that would seem to be the case?

Mr. BUTLER: Yes.

Q. I notice on Ex. 58, for instance, statement showing passengers carried one mile and revenue, August 1, 1907, to April 30, 1908, compared with the same period one year previous, illustrating the comparative effect of two cents per mile passenger rate in Wisconsin and Minnesota, two and one-half cents in North Dakota, and three cents in all other states;

I find in a note here, "In apportioning interstate passenger revenue, after July 1, 1907, Minnesota was allowed its mileage proportion notwithstanding its two-cent maximum rate. The average over-allowance to Minnesota on tickets sold on basis of two cents in Minnesota, two and one-half cents in North Dakota, and three cents west of North Dakota, is about 7.9 per cent, as demonstrated by an analysis of January, 1908 traffic. Applying this percentage to the Minnesota interstate passenger revenue August 1, 1907, to April 30, 1908, $1,438,120.23, produces an over-allowance in this period of $113,611.50, resulting in a loss of $38,951.90 on interstate business." Now, if I understand what you mean by that table and that note, it is this: That you figure that in dividing the returns of interstate business as between North Dakota and South Dakota and Wisconsin and the other states, you should figure to each state upon the basis of the local rate out of the total?

A. No; I have stated what would have happened if we had restricted Minnesota's proportion to the maximum of two cents per passenger per mile. For example, we will say that a ticket sold from St. Paul to Helena sold at an average rate of two and three-fourths cents per passenger per mile, Minnesota getting its mileage proportion would get the revenue on the basis of two and three-fourths cents, or more than the maximum rate; consequently it would give Minnesota more revenue than it was really entitled to.

Q. That is just what I am getting at. Before this two-cent rate went into effect in Minnesota and the other rates in Wisconsin and North Dakota, in allowing or apportioning to each state its proportion of the interstate business, you did it upon a mileage basis, didn't you?

A. Always, yes, sir.

Q. That is, if there were three hundred miles of the run in Minnesota and two hundred in North Dakota, you figured it at the basis of two-fifths to North Dakota and three-fifths

to Minnesota?

A. Yes, sir.

Q. And throughout. Now, since that went into effect you have changed your system, haven't you?

A. No, sir, we have not changed the system. That is the reason—

Q. You still apportion it according to the mileage, do you?

A. According to the mileage, yes, sir.

Q. Then you don't proceed upon the theory that the local rate cuts any figure in the through rate?

A. Well, as far as accounting is concerned, we know nothing about the making of the rates. This plan—

Q. No, but so far as bookkeeping is, you do?

A. We don't know anything about rates there except to check them and determine the correct revenue of the Company.

Q. You make a report to the State of Minnesota every year, don't you, of the business done in Minnesota?

A. Yes, sir.

Q. Both intrastate and interstate?

A. Yes, sir.

Q. I suppose you do the same in North Dakota, don't you?

A. I don't recall whether we do or not, but I think we do now.

Q. And do you in the other states?

A. In some of them, not all of them.

Q. Now, in doing that, your department makes the figures which go to make up that report, don't they?

A. Oh, yes.

Q. And have you in your report for the year 1908, included as Minnesota business the interstate business upon the mileage basis?

A. Yes, sir.

Q. Or upon the basis of two cents a mile to Minnesota?

A. No, sir, on a straight mileage basis, regardless of the rate.

Q. Then, since the rates have been reduced by the statute in Minnesota and North Dakota, you do as you did before, you treat the interstate haul as an entirety and distribute it among the states upon a mileage basis?

A. Yes, sir.

Q. And you don't know whether that through rate is made by adding the locals for the hauls in the different states that go to make up the interstate hauls or not?

A. No, sir, I don't.

Q. Now, turn again to your Exhibit 55, will you? Have you the average rate per passenger per mile for the entire System for the years 1901 to 1908?

A. No, I haven't it with me.

Q. Have you the average rate per passenger per mile for Minnesota interstate during the years 1901, 1902, 1903, 1904, 1905, 1906, 1907 and 1908?

A. I can't say, off-hand, whether I have it or not.

Q. Will you look and see?

A. The interstate passenger business in Minnesota?

Q. The rate per passenger per mile in Minnesota, the average rate per passenger per mile in Minnesota, for interstate business in Minnesota, during the years mentioned on Ex. 55.

A. No, I haven't got that.

Q. Have you ever figured it?

A. No, sir.

Q. Can you do it easily?

A. Not very easily, unless on the assumption of these percentages of errors that have been referred to heretofore in classifying the business.

Q. Now, then, looking at this Ex. 55, you have not taken out any percentage of error for those figures, have you?

A. No, I have not; and the reason—

Q. The Minnesota average is there—

Mr. How: Let him finish the answer.

WITNESS: Let me finish my answer, please.

Q. Sure.

A. And my reason for not giving any consideration to that was that the percentage of error in the passenger business (that is, in classifying the passenger business as between intrastate and interstate) was so small that it wouldn't materially effect the rate per passenger per mile received.

Mr. How: My recollection is that that was the connection in which, in his direct, he said the percentage was so small that it wasn't worth while.

Q. Then it wouldn't affect the rate in interstate business, either, would it, that is, the average rate?

A. No, sir.

Q. Now, I notice here that starting with 1901, in Ex. 55, the average rate per passenger per mile in 1901 was 2.299 cents.

A. In Minnesota, yes, sir.

Q. In Minnesota, yes. And that in 1906 that average had increased until it was 2.406?

A Yes, sir, it had increased.

Q. Then in 1907 there was a drop there, and it went down to 2.197?

A. Yes, sir.

Q. Do you know how much your passenger traffic increased in the number of passengers carried between 1901 and 1906?

A. I don't believe that that is shown on any of these exhibits. No, I haven't the information here.

Q. Well, it is true, is it not, that although your passenger business increased yearly from 1901 up until 1907, so that the increase from 1901 to 1907 was 44.6 per cent, from 1901 to 1906, inclusive, you had increased your average rate per

passenger per mile in Minnesota instead of decreasd it?

A. Yes, sir, the returns were a higher average rate.

Q. Now, taking in Wisconsin, there was a decrease from 1901 to 1906, was there not?

A. A slight decrease, yes sir.

Q. Yes, a decrease of .108 of a cent?

A. Yes, sir.

Q And yet there had been a very considerably less increase in the passenger traffic in Wisconsin than in Minnesota?

A. A less increase, measured by percentage, yes.

Q. Now, in North Dakota, down to 1906, you had increased your rate per mile?

A. A slight increase, yes.

Q. Yes, about seven-hundredths of a cent?

A. Yes, sir.

Q. And yet your passenger business in North Dakota had increased more than double?

A. In North Dakota?

Q. Yes.

A. It had been multiplied by two and one-half; the passenger business had increased two and one-half times.

Q. And yet, taking all the other states together, from 1901 down to 1906, you had made a slight decrease?

A. A slight decrease, yes.

Q. Well, "a slight decrease,"—it was a greater decrease than you had made in North Dakota, wasn't it?

A. Why, we had an increase in North Dakota, between 1901 and 1906.

Q. Yes, between 1901 and 1906, and you had made a decrease in the other states?

A. Yes, sir.

Q. And yet your passenger traffic in the other states had only increased how much?

A. 173.5 per cent.

Q. Now, I will ask you to get the figures, if you can, from your records, and be able to tell us tomorrow, whether this does not appear to be true: That, beginning with the year 1901, your average rate per passenger per mile in Minnesota decreased from 2.075 cents in 1901 to 1.949 cents in 1906; that is, on interstate business in Minnesota.

A. Do you want the same years that we have got on this other statement?

Q. Yes, from 1901 to 1906; and say whether it is not true that from the year 1901 to 1906 there was an increase in the rate of 4.33 per cent, although the traffic very largely increased, that is, on intrastate, whereas there was a decrease in interstate in Minnesota of 6.1 per cent.

A. Well, I can't say whether that is so or not until I get the figures.

Q. I will ask you to get the figures and present them here tomorrow morning, if you will. My recollection is that you have said these rates per passenger per mile in Minnesota which you have given in Ex. 55 are made up upon the basis of pay passengers hauled, and does not take into consideration those which were hauled free.

A. No, sir, no free passengers included.

Q. Then my statement that it is made up upon the basis of pay passengers is correct?

A. Revenue passengers.

Q. And I understood you to say that these lower rates, or this lower rate of 1908 and the lower rate of 1907 (that is, lower than 1906) was accounted for, in part, at least, by passengers carried at commuted rates or lower rates?

A. Lower than two cents; that is, lower than two cents in 1908.

Q. Well, it is also true, I believe you said, that it included those of your workmen, men that were engaged upon your

work, the construction work, carried at low rates?

A. Yes, sir.

Q. Do you know how many men were carried at those lower rates who were engaged in construction work for the Railroad Company, in the year 1908?

A. I do not.

Q. Do you know what rate per mile was given to those men carried in construction work?

A. It is not a question of rate per mile; it is a question of bookkeeping of the Company.

Q. I don't care anything about what it is a question of. You have it included in here as making up this rate?

A. Yes, sir.

Q. This average rate. Now, I want to know—

A. To the best of my knowledge and belief, it is one cent per passenger per mile.

Q And you don't know how many of them there were?

A. No; I can find out if you would like to know.

Q. Well, I think you had better.

A. All right, sir.

Q. In the year 1907 and in the year 1908.

A. All right.

Adjourned until the morning of Tuesday, December 22nd.

FEDERAL BUILDING, St. Paul, Minn., Tuesday, December 22, 1908.

The hearing was resumed at 10 o'clock A. M.

WILLIAM G. JOHNSON,

recalled for further cross-examination, testified:

By Mr. DURMENT:

Q. You were asked to produce the figures or calculations which showed how you arrived at the percentage of error as to tons and ton miles in the Minnesota intrastate business as

formerly the Northern Pacific classified interstate business; have you done so?

A. Yes, sir.

Witness produces paper marked for indentification "Defts' Ex. MM—Johnson."

Mr. DURMENT: In connection with this Ex. 54—Johnson we offer Defts' Ex. MM—Johnson, the purpose being to show the details of the method by which he arrived at the percentage of error in the Minnesota intrastate business as formerly classified by them, and it is referred to in his testimony as to Ex. 54.

Q. I notice in this Ex. MM, under each commodity you have Minnesota intrastate, then Minnesota interstate, then totals classified as intrastate; that first Minnesota intrastate is the tons the transportation of which began and ended in Minnesota?

A. Yes, sir.

Q. And the Minnesota interstate is that which originated outside of the state and ended in the state, or originated in the state and ended outside, but which, under the old classification, you carried as intrastate?

A. Yes, because it was based on the Northern Pacific haul and not on the whole movement of the shipment.

Q. Now, in the Minnesota interstate, as you have it in this Ex. MM, were the Minnesota charges based upon the local rates, or upon a through rate?

A. I couldn't answer that question.

Q. And it may be that at least a large part of this which you have classified as interstate in Ex. MM was hauled upon the local rate?

A. Some of it may have been hauled, yes; I presume it was. That is to say, that the through rate was made up of the sum of the locals.

Q. But do you know whether the return which the Northern Pacific received for making those hauls was a return given to

them by some other company as a part of a through rate, or whether it was paid direct by the shipper for the haul over the Northern Pacific?

A. Some of it was based on a percentage of a through rate. Some of the other shipments were undoubtedly at through rates which were the sums of the locals.

Q. Does it include any in which the money received by the Northern Pacific for the haul was the local rate and paid to the Northern Pacific by the shipper direct for the haul over the Northern Pacific?

Mr. BUTLER: That is, its portion alone to the Northern Pacific?

Mr. DURMENT: Its portion alone to the Northern Pacific.

A. Generally speaking, I should say no. On a through shipment, say from Chicago to Detroit, Minnesota, that portion of the charges up to Minnesota Transfer would be billed out by the Northern Pacific as advance charges, added to the charges made by the Northern Pacific for the haul from Minnesota Transfer to Detroit, Minnesota, and the sum of both collected from the consignee.

Q. That is, where these shipments would be from out of the state to a point in the state and received by the Northern Pacific, say at the Minnesota Transfer, the Minnesota Transfer would bill it out from the Transfer to the point of destination with the local charges from the Transfer to the point of destination, and add the charges from outside of the state to the Transfer as advance charges paid by it?

A. Yes, sir; not in all cases, though.

Q. But in a good many?

A. In a number of cases, yes.

Q. And I suppose in a number of cases there was a through shipment where the freight was paid at the point outside of the state or where it was on a through bill and collected at the end of the haul?

A. Either prepaid or collected at the other end on through billing or interline billing, and not rebilled at the Minnesota Transfer.

Q. This interstate includes some of this that was shipped through on through billing, does it?

A. Yes, sir.

Q. Now, shipping the other way, from a point in Minnesota outside, did the same system prevail? Would there be in this some that was shipped say to the Transfer upon a billing to the Transfer and be reshipped from there to a point outside the state?

A. Rebilled from the Minnesota Transfer?

Q. Rebilled.

A. Yes, sir.

Q. And in that case the road which took from Minnesota Transfer out of the state would collect from the Transfer to the point of destination, and collect the charges into the Transfer as advanced by them?

A. Yes, sir.

Q. And I suppose there were others that were shipped from some point in Minnesota through the Transfer, outside of the state, on through billing?

A. Yes, sir.

Q. Was there still a third class, that which would be shipped from a point in Minnesota to the Transfer, for instance, as a single—I mean as an entire shipment, and there reshipped upon an entirely new contract?

A. Well, we wouldn't have any knowledge of such a shipment as that.

Q. You would not?

A. Only in cases where we were interested in the charges would we know. The case or instance you speak of would be about parallel to a man shipping a carload of hay to St. Paul, and then turning around and shipping it to some other point

without the knowledge of the railroad company. The only knowledge we would have would be through the advance charges or prepaid charges.

Q. Then that would necessarily go as intrastate in your business if you haul it into the Transfer?

A. Naturally, yes, sir.

Mr. How: Two separate contracts?

WITNESS: Two separate contracts.

Q. Now, just what is this system of shipping from one point in the state to a point out of the state and rebilling at some intermediate point, how is that done?

A. Well, that is very often a matter of accounting. Some roads won't consent to through billing. In other cases it may be for other reasons; but it is the aim of the railroad companies now-a-days to get in all the through billing they can, to save accounting work; but there is really no reason, outside of the consent of the lines interested to through billing.

Q. But some lines won't consent to through billing. What is the difference in the actual transaction in the shipping on a through billing and shipping in a case where they have to rebill?

A. Well, you take the case of a shipment say from Detroit, Minnesota to Chicago, the agent at Detroit would make one way-bill; let us assume that the shipment was passing over the Northern Pacific and the Chicago, Milwaukee & St. Paul; he would send to our auditor a tissue copy of that way-bill; the Milwaukee & St. Paul, being the receiving line, and there being no intermediate carrier, would not require any tissues. In other words, it would be the case of making just one way-bill instead of two in that instance. Then, of course, as the lines interested multiply, it means a saving in way-billing and a consequent aid to pushing the shipment through.

Q. That case you put would be a through billing, wouldn't it?

A. That is through billing.

Q. Mr. Butler suggests you may explain right here what would be done with the original way-bill which was issued by the Detroit man on this through billing.

A. That would be taken up and retained by the Milwaukee & St. Paul Road and kept in its records. They would report to the Northern Pacific on what we call interline account and pay to the Northern Pacific its proportion of the charges for the transportation.

Q. Now, take a shipment from Detroit to Chicago not on through billing but where it would be rebilled.

A. The Northern Pacific agent at Detroit would make a way-bill to Minnesota Transfer; when this shipment arrived at Minnesota Transfer, the agent at that point would make a way-bill to Chicago; on that way-bill would appear not only the local charges from Minnesota Transfer to Chicago, but also the advance charges or the Northern Pacific charges that had accrued from Detroit to Minnesota Transfer.

Mr. BUTLER: With reference to the car that hauled it from Detroit to the Transfer, would that be noted, too?

WITNESS: Oh, yes, all the necessary details from which to trace the shipment in case of loss and damage, etc.

Q. And the charges would be collected at Chicago. And how would the Northern Pacific get its share?

A. Why, the agent at the Minnesota Transfer, when he billed out the advance charges, would issue a draft; I am assuming this goes over the Milwaukee & St. Paul also; he would issue a draft as the agent of the Milwaukee & St. Paul, paying over to the Northern Pacific its charges from Detroit to the Minnesota Transfer.

Q. And that would be the settlement for its service?

A. That would settle the Northern Pacific's interest in that shipment.

Q. Now, would the agent at Detroit, when he issued the

original way-bill to the Transfer, designate the line over which it should be hauled from the Transfer?

A. He might not always do that. Some shipments are routed; that is to say, the route is designated, and others not; it is left open to the agent, or—

Q. That is, if the shipper demanded that he send it over a particular line, I suppose he would note that on the way-bill?

A. Yes, I believe he would.

Q. Otherwise he would leave it to be disposed of at the Transfer?

A. He might leave it—it would then be left to somebody else's judgment as to which line should carry it between Minnesota Transfer and Chicago.

Q. Well, who would determine that?

A. Well, I don't know who would determine that in that case. It might be done under a general understanding that each road should get a certain percentage of the un-routed shipment, but I am not positive on that point as to what the custom is.

Mr. BUTLER: Minnesota Transfer has a common agent?

WITNESS: Yes.

Q. You were asked last evening, I believe, if you could give us the average rate per passenger per mile, received by the Northern Pacific Company in Minnesota in the years 1901, 1902, 1903, 1904, 1905, 1906, 1907 and 1908 for interstate passengers; have you that?

A. As I remember the request, it was asked for for the years 1901 to 1906, and I so prepared it.

Q. Very well; I guess that is right. What do you find the average for those years?

A. The average rates per passenger per mile on interstate passengers carried in Minnesota were as follows: For the fiscal year ending June 30, 1901, 2.075 cents; 1902, 2.058; 1903, 2.013; 1904, 2.011; 1905, 2.027; 1906, 1.949.

Q. You haven't given us the other years; that is, I didn't ask for them.

A. You didn't ask for them, so I didn't prepare them. Hold on, I have got them here on a memorandum, I thought may be you might want them.

Mr. DURMENT: We have them here.

Mr. BUTLER: How do yours compare?

Mr. DURMENT: With one exception, 1903, we have it some less, we have got it for 1903, 1.998 cents.

WITNESS: Do you want 1907 and 1908?

Q. If you have them, yes, please.

A. For 1907, the average rate was 1.981 cents, and for 1908, 1.928 cents.

Q. If I have computed it correctly, that shows, then, this situation: that in Minnesota between 1901 and 1906, including those two years, the rate per mile per passenger, average, in Minnesota, increased 4.33 per cent?

A. I haven't figured that out into a percentage. It is a fact, however, that the average rate in Minnesota on the intrastate business increased 1.07 mill.

Q. And, as I figure it, the percentage of decrease in the same period in interstate business was 6.1 per cent. You perhaps haven't figured that, but you can give us the total decrease.

A. The decrease in the average rate on the interstate business was 1.26 mills.

Q. I notice on Ex. 56 that between the years 1901 and 1907 the average rate per passenger per mile, intrastate haul, decreased in the state of Minnesota, also in the state of Wisconsin, also in the state of North Dakota, and also in all the other states through which the line runs taken in the aggregate; I also notice that the percentage of decrease is smaller for Minnesota than any of the others you have given. Is there any reason for that?

A. That is not the fact. The percentage of decrease in Minnesota is 4.4 per cent; in Wisconsin it is one-half of one per cent.

Q. Well, you have got the percentage of decrease five per cent?

A. No, sir, it is five-tenths of one per cent. In North Dakota it is eight-tenths of one per cent, and in all the other states 4.6 per cent.

Q. I see that I am off on my arithmetic. Well, that is my mistake, I see it now. But, at any rate, can you tell us, as long as I am into it, on what theory these decreases are made, if any theory at all?

A. I believe I have previously stated that, as an accounting office, we have nothing to do with the making of rates, and any figures that I give you can only be what appears from the records of the actual transactions.

Q. And you don't know why that is so?

A. No, sir, I do not.

Q. Now, take this Ex. 56, maximum rate per passenger per mile: What is the purpose of showing on this exhibit that difference between the three-cent rate and the average collected in 1907, if I may ask?

A. The purpose of that was to show that Minnesota had already received voluntary reductions of 26.7 per cent as against only 8.6 per cent in Wisconsin, 10.6 per cent in North Dakota, and 11.5 per cent in all other states, on intrastate business.

Q. Was the Northern Pacific Railway Company in fact charging three cents a mile in 1901 on intrastate business?

A. Intrastate?

Q. Yes.

A. Yes, sir.

Q. What was the average charge for all passenger business on the line (I mean in Minnesota) on the Northern Pacific Railway Company tracks in 1901?

A. Do I understand you to mean both interstate and intrastate?

Q. Yes.

A. I can't answer that question off-hand; I haven't the data with me.

Mr. BUTLER: That is not contained in any other exhibit we offer?

WITNESS: I don't think so.

Mr. BUTLER: I think it is not.

WITNESS: No.

Q. Well, doesn't your Ex. 55 show that the average rate charged per mile on intrastate business in Minnesota in the year 1901 was 2.220 cents?

A. Yes, sir, it does.

Mr. BUTLER: And you have also given, separately, what the average rate per passenger per mile on the interstate business was for that same year?

WITNESS: Yes, sir, I have.

Mr. BUTLER: But you haven't the figures showing the average when both are taken together?

WITNESS: No, sir, I haven't those figures here.

Q. If, as a matter of fact, the Road was only charging an average of 2.220 cents per mile in 1901, how can it be said that there was a reduction or difference between the rate of 1901 and the rate of 1907 of .883 cents per mile?

A. I am unable to verify those figures. Which exhibit are you looking at now?

The MASTER: 56.

Last question read.

Mr. BUTLER: It purports on its face to show what it is; one is the maximum that was charged for mileage, and the percentage is based on the difference between the average and the maximum, and you are now calling attention to what the average was in 1901, which of course, was lower than the maximum.

I think that is understood, that it always is.

Mr. DURMENT: What I am trying to get at is as to what use this witness makes of it and how he can justify himself in making tables upon the basis of a difference between the maximum rate in 1901 and the average rate of 1907, when he has already shown that they only charged an average rate in 1901 of 2.299 cents.

Mr. BUTLER: Well, we think, Mr. Durment, that your question is subject to the objection that it is argumentative. Its purpose and weight and effect perhaps need not be defined by the witness.

Mr DURMENT: Well, that may be, but we will see what he says about it, unless the Court says I can't ask him.

WITNESS: I think I have already stated that the object in showing the table that the question refers to was to show the voluntary reduction made by the Company. The reduction based on the actual returns received is shown in the same exhibit, being a decrease of 4.4 per cent between the years specified.

Q. Oh, then the object of that is to show that the Company in fact charged or received, on the average, in 1907, .803 per passenger per mile less than it had the right to charge if it wanted to in 1901?

A. Yes, sir, that is true.

Q. This average amount collected in 1907—2.197—included, as you said, all pay passengers?

A. All pay passengers.

Q. And that includes those who rode at half-fare?

A. Yes, sir.

Q. Those who rode on commutation tickets?

A. Yes, sir.

Q. Those who were carried at one cent a mile?

A. What particular passengers do you refer to?

Q. Well, if there were any carried at one cent a mile, it

includes them?

A. It includes all the business of the Company.

The MASTER: That is, all the revenue business?

WITNESS: All the revenue business.

Q. And it appears, already, in evidence, that during that year there were carried a number of laborers that were engaged in the construction work of the Company; you yourself said that one cent was the usual fare there, you thought?

A. Yes, I think that is the charge we make against the work.

Q. Then this figure of 2.197, the average collected in 1907, was not as much as the road might have collected, is it?

A. No, sir. Well, as to that I am not able to say, because I don't make the rates.

Q. But it necessarily must be that if they haul some at one cent and some at half-fare and some at commutation rates they didn't charge the full amount that the law allowed them to charge?

A. No, it is quite evident that we didn't charge 3 cents for everybody, but whether we could or could not have done so, it is beyond me to say; I am not a traffic man, I don't make the rates. I want to say, still further, that in computing this average rate for the year ending June 30, 1907, consideration must be given to the fact that there were two months of that year when the 2-cent rate law was in effect.

Q. That reduced it some?

A. Yes, sir.

The MASTER: Did I understand you to say that the rate in 1901 was 3 cents, or was that the legal rate?

WITNESS: The legal rate all over the entire System of the Northern Pacific was 3 cents per passenger per mile.

The MASTER: But at that time you had half fares and commutation fares, and all that sort of thing, just as you have included them in making up your average for 1907?

WITNESS: Yes, sir.

Mr. BUTLER: The three is indicated as the maximum rate.

The MASTER: Yes, I see it is.

Q. As a matter of fact, the difference between the average rate collected in 1907 and the average rate collected in 1901 is .102 of a cent?

A. Yes, sir.

Q. Will you take Ex. 58, Mr. Johnson? As I remember, you said yesterday that on interstate business the plan followed by the Northern Pacific Railway Company of apportioning the interstate business between the states in which the haul was made is to apportion the revenue derived for the haul between the states upon a mileage basis?

A. Yes, sir, upon a road-mileage basis.

Q. And that has been the plan since you have been connected with the Company?

A. Yes, sir, as far back as I can remember.

Q. I notice in a foot-note here that in apportioning interstate passenger revenue after July 1, 1907, Minnesota was allowed its mileage proportion notwithstanding its two-cent maximum rate. That means that you followed the same plan as always, regardless of the reduction in the local rates in Minnesota?

A. Yes, sir.

Q. "The average overallowance to Minnesota on tickets sold on basis of two cents in Minnesota, two and one-half cents in North Dakota and three cents west of North Dakota, is about 7.9 per cent as demonstrated by an analysis of January, 1908, traffic." Please tell us just what you mean by that, will you?

A. Assuming that a ticket was sold for an interstate trip covering a mileage in Minnesota of 250 miles, 500 miles in North Dakota and 500 miles in Montana, on the basis of two cents in Minnesota, two and one-half cents in North Dakota and three cents in Montana, the amount charged for that ticket would be $32.50; Minnesota's proportion, on a mileage basis, would give

Minnesota earnings $6.50, whereas the 250-mile haul at the Minnesota maximum of two cents per mile would yield to Minnesota only $5, therefore, there would be, in reality, an overallowance to Minnesota of $1.50. That illustrates the principle.

Q. And where would that overallowance go in the makeup?

A. Why that would be distributed between the states of North Dakota and Montana.

Q. But there would be an overallowance in Dakota, too, wouldn't there?

A. There might be.

Q. Well, wouldn't there necessarily be? They were cut down a half cent.

Mr. BUTLER: Not necessarily.

A. North Dakota would receive, on a mileage prorate, 50 cents more than it was entitled to.

Q. 50 cents more than it was entitled to?

A. Yes, sir.

Mr. BUTLER: Then Montana would be $2 short.

Q. Then the result would be that you would take the $1.50 in Minnesota and the 50 cents of North Dakota and that would go to Montana on this divide, wouldn't it?

A. Yes, sir.

Q. But you don't know, I suppose, whether it is true that through rates are always equal to the sum of the locals?

A. I don't know that, as a matter of fact.

Q. Then, as I understand, what you mean by an overallowance in this note is that if the through rate were apportioned among the states in which the through haul is made upon the basis of the legal rate allowed by law to be charged, the maximum, Minnesota would get less than it would if it were apportioned upon a mileage basis?

A. That was the fact demonstrated from the analysis made of the January, 1908, traffic.

Q. And the same thing would be true of North Dakota?

A. It might not. We didn't investigate as to North Dakota.

Q. Why might it not be true? that is the point.

Mr. BUTLER: Depend on the length of the travel in North Dakota.

A. It would depend on all the circumstances surrounding the traffic.

Q. If upon a mileage basis each gets according to the number of miles hauled within the state and the legal rate has been reduced in two states, why won't it result in an average upon each in each state?

A. North Dakota as to traffic between that state and Montana would get more than its proper allowance.

Q. Why?

A. Because the maximum rate in North Dakota is less than it is in Montana. To the contrary, interstate business between North Dakota and Minnesota, divided on a mileage basis, would yield less to North Dakota than its maximum rate of two and one-half cents. It works both ways, it depends on what the combination is.

Mr. BUTLER: Dakota is between a state that is lower and a state that is higher than the maximum?

WITNESS: That is it.

Mr. HOW: Your question is all right upon the assumption that all interstate business goes away across the state of North Dakota.

Q. As to all interstate business which traverses Minnesota, North Dakota and into Montana, North Dakota would get more than her share upon a mileage basis, would she not, more than she would if divided upon the basis of the maximum legal rate?

A. Well, that is a technical question. In order to answer it clearly, I would have to take some illustrations and work them out. Now, there might be a case of a short haul in Montana, a short mileage in Montana, a long mileage in North Dakota, a short mileage in Minnesota, that might not work out; there are

all sorts of combinations. It is a mathematical calculation.

Q. Oh, then the fact that the maximum rate in one state has been lowered, as it is in Minnesota, and the rates beyond are higher, does not make this rule you have applied here to Minnesota as to overage work in all cases?

A. No, it wouldn't work in all cases. The purpose of the foot-note in this Ex. 58 is to demonstrate what the interstate business would have produced in Minnesota if we had applied the legal maximum rate of two cents per mile.

Mr. BUTLER: And is based on an analysis of the whole business for one month?

WITNESS: Yes, sir.

Mr. BUTLER: Of January, 1908?

WITNESS: Yes, sir.

Q. Well, my purpose is to find out what the rule is, if there is a rule, by which you get that result and whether it works in all cases and with reference to all states, or only as to some cases and with reference to Minnesota.

A. I have already stated to you that you must take each ticket or each lot of business between two points and analyze it and work out each bunch of tickets and the revenue received from each. It is a matter of charges, of figures.

Mr. BUTLER: And that was done, as you say in the foot-note, for one month, to-wit, January, 1908?

WITNESS: January, 1908.

Mr. BUTLER: And the percentages, of course, based on the results of that analysis for that period?

WITNESS: Yes, sir.

The MASTER: That was taking up each individual case?

WITNESS: Naturally it would have to be in order to be accurate; you couldn't arrive at it in any other way.

The MASTER: That is the way you get your per cent?

WITNESS: Yes, sir.

The MASTER: Sometimes there would be an over-allowance

sometimes there would not?

WITNESS: That is so. Sometimes there would be an under-allowance.

Mr. DURMENT: I believe there is a rule that works, if we can find it, and it works the same as to every state and every haul. Now, I am going to try to work it out with this witness before I get through, either find it or convince myself that I am wrong.

Q. Suppose we have a haul that is 300 miles in Minnesota and ten miles in North Dakota, (we are talking now of passengers) that would be, we will say, 25 cents for the haul in North Dakota and $6 for the haul in Minnesota, wouldn't it?

A. Yes, sir.

Q. That would be $6.25. Upon a mileage basis, what would be the division to North Dakota and what the division to Minnesota?

A. Dividing the total of $6.25, the value of the ticket, on a mileage basis, would give to Minnesota $6.05 (within a very slight fraction) and would give to Dakota 20 cents; whereas, at the two cents maximum in Minnesota it would be $6, and at the two and one-half cent rate in Dakota it would be 25 cents.

Q. Now, reverse it and see what would happen—300 miles in Dakota and ten miles in Minnesota.

A. In that case, Dakota would receive $7.45 as against $7.50 at the maximum of two cents per mile, and Minnesota 25 cents as against the maximum of 20 cents.

Q. Now, isn't it true that that rule works right straight through in every case in a haul between Minnesota and North Dakota; that, relatively, Minnesota, upon a division upon a mileage basis, will get more than it would on the basis of the maximum legal rate?

A. That Minnesota will get more?

Q. Yes.

A. Yes, sir.

Q. Every time?

A. Every time.

Q. Then it is not any question of classifying the business, or anything of the sort, it is a rule that works, necessarily, in passenger traffic, where the maximum legal rate is less in Minnesota than it is in North Dakota; if you divide upon the mileage basis Minnesota will always get a greater proportion?

A. Get more than it would receive under the maximum, yes, sir.

Q. Now, then, that same thing would be true in every case as between North Dakota and Montana, wouldn't it?

A. Yes, sir. Between North Dakota and Montana, North Dakota would always get more than the through business on the legal maximum rate in the state.

Mr. DURMENT: That is what I had in mind as the rule, Mr. Butler.

Mr. BUTLER: How would that rule work on a ticket sold at one cent a mile from one end to the other?

Mr. DURMENT: How would it work at one cent a mile? I should say the same way. Let us try that, just for luck. That is a good illustration. I forgot that the road ever sold at one cent.

Q. Now let us take a case of a ten-mile haul in Dakota at one cent a mile, a 300-mile haul in Minnesota at one cent a mile; that would be $3.10 for the entire haul, wouldn't it?

A. Yes.

Q. What would be Minnesota's proportion of that upon the mileage haul?

A. It would get less.

Q. On the mileage?

A. It would get less on the mileage haul—Well, wait a minute.

Q. It would be $3, wouldn't it?

A. 300 in Dakota is that?

Q. No, 300 in Minnesota.

A. That is at a cent a mile?

Q. A cent a mile.

A. And ten in Dakota?

Q. Yes. Now if you divide it upon the milcage basis, that would be $3 to Minnesota and ten cents to Dakota?

A. Yes, sir.

Q. Now, if you divide it upon a basis of the maximum legal rates in the two states, what will you get?

A. Dakota will get more and Minnesota less.

Q. More than her share?

A. Well, I don't know that you would call it "her share."

Q. Well, Dakota will get more, then?

A. Well yes, more on the basis of the legal rate than it would on the mileage prorate.

Q. Now, I am learning. Let us see. That would be dividing the $3.10, then. Well, divide it and tell us what she would get, will you, upon that basis?

A. On the basis of the legal maximum rate?

Q. Yes.

A. On the basis of the legal rate Minnesota would receive $2.98 as against $3 on the mileage prorate; Dakota would receive, on the basis of the legal maximum rate, 12 cents as against 10 cents on a mileage prorate.

Q. Well, then, the rule still holds, doesn't it, that Minnesota would receive more upon the mileage prorate than upon the prorate upon the basis of the maximum legal?

A. Yes, sir.

Q. Can you give us an instance, a concrete example, where you take an interstate haul between Minnesota and North Dakota, or between North Dakota and Montana, the state which has the lowest legal maximum rate will not get more, upon a mileage prorate basis, than it will if you prorate upon the basis of the maximum legal rates?

A. The states having the lowest legal maximum will always get more on a mileage prorate than the other states.

Q. Whatever the rate is? You mean regardless of the rate charged?

A. I don't quite catch your question.

Q. Well, regardless of whether the rate actually charged or the return received is from a rate of two cents or one cent or three cents?

A. No, it wouldn't make any difference.

Q. Then there is no occasion for figuring out any particular class of business, or particular examples, or any particular month, on that proposition, is there, to find out?

Mr. BUTLER: How much?

Mr. DURMENT: Well, you might say as to how much, yes, but to find out the rule.

Q. Every passenger carried falls within that rule?

A. Within the rule?

Q. Yes.

A. Practically, yes.

Q. Now, where did you get your 7.9 per cent? Give us your figures, will you, so we can see whether it is right or not. "The average over-allowance to Minnesota on tickets sold on basis of two cents in Minnesota, two and one-half cents in North Dakota, and three cents west of North Dakota, is about 7.9 per cent as demonstrated by an analysis of January, 1908, traffic." How did you arrive at your 7.9 per cent?

A. We figured out what Minnesota would have received on the basis of its maximum of two cents a mile on the interstate passengers; we knew what we had given to Minnesota as its proportion; the difference between one and the other was 7.9 per cent.

Q. Have you those figures here?

A. No, sir, I haven't got them here.

Q. Can you bring them this afternoon?

A. Why no, I can't; there are a great many sheets; I would have to go into our passenger office and see if they have got the data now.

Q. I want a little more detailed explanation of just how you arrived at that; I haven't yet any idea of the process by which you get your 7.9 per cent referred to in that note.

A. I have already stated that we investigated the month of January, 1908, and we found that by computing the Minnesota proportion of interstate business on the basis of the legal maximum of two cents per mile would have yielded to Minnesota 7.9 per cent less than we actually conceded to the state dividing the business on a mileage prorate.

Q. For that particular month?

A. Yes, sir.

Q. That is to say, that you conceded to Minnesota for the month of January, 1907, I think you said it was—

A. 1908.

Q. —in round numbers say $45,000, as its share of interstate business, that was on a mileage basis?

A. Yes, sir.

Q. You took the number of miles that went to make up that mileage for January and multiplied it by two cents?

A. No, sir; we re-divided the business.

Q. How did you re-divide it?

A. We had the business on sheets showing just what had been allowed to Minnesota on a mileage prorate; then we figured out what Minnesota would have received on the basis of the 2 cent maximum; the difference between one and the other was 7.9 per cent, the reduction in revenue.

Q. You had the sheets, you say, which showed the interstate mileage in Minnesota during that month?

A. Yes, sir.

Q. And that also showed how much had been apportioned to Minnesota of the amounts actually received?

A. Yes.

Q. And did you take each individual instance, or did you total them and then get at your results? Simply for the purpose of making it clear to my mind.

A. Well, I know it is a pretty hard matter to make clear to anybody, unless you see all the data and the process of arriving at all these figures; it is a pretty hard matter to explain here to a lawyer and make it clear to him.

The MASTER: Could you take a half a dozen cases and just work it right out, assuming that the business had been half a dozen shipments for that time?

WITNESS: We have already worked out some here that illustrate the principle that we applied to one month's business.

The MASTER: Now, get your percentage.

Mr. DURMENT: We are going after that 7.9 per cent now.

The MASTER: What he wants is the per cent now. Get your per cent from a few cases, for instance. It might not, of course, be this per cent, but assume a few cases and get your per cent.

WITNESS: It is a pretty hard thing to make concrete examples of these things.

Mr. BUTLER: Perhaps if another subject be taken up, by 2 o'clock he can make such an example as your Honor suggests.

The MASTER: I don't want to interject into this anything that does not properly belong here, but Mr. Durment was trying to find out how that per cent was worked out.

Mr. DURMENT: That properly belongs here, and that is what I am after.

WITNESS: Well, I could state it to you in this way, your Honor: That we will take twenty passengers travelling between St. Paul and some point in North Dakota, on which the mileage prorate to the state of Minnesota yielded $107.90. Now, you take the distance from St. Paul to Fargo, which is 250 miles; taking those twenty passengers for 250 miles from St. Paul to Fargo would be 5,000 miles, which at two cents

would yield $100 to the state of Minnesota, the difference being $7.90.

Mr. BUTLER: Now, go on and tell how you reduced that to the percentage of over-allowance.

Mr. DURMENT: He has got that $7.90. He had better explain it.

Mr. BUTLER: That is, if you want him to.

Mr. DURMENT: Yes.

WITNESS: It doesn't figure out quite 7.9 per cent.

Mr. BUTLER: Make the percentage on your example, no matter what the percentage happens to be.

WITNESS: The reduction there would be $7.90. Of course, that does not figure out quite to the 7.9 per cent, but it illustrates the principle that is followed.

Q. In doing your work for the month of January, did you take each particular ticket (I suppose you would call it ticket) in that month and find out the basis of division on that ticket, or did you lump the business for the month and take your differences and compute your average in that way?

A. I want to make it very clear that as Assistant Comptroller of the Northern Pacific it is not possible for me to work out all these details myself; I requested our Auditor of Passenger Receipts to answer that question, that is, to tell me what the reduction would be if Minnesota's proportion of the interstate business had been figured on at the two cent maximum instead of on the mileage prorate. Our Auditor of Passenger Receipts, or his chief clerk, furnished me with the data upon which this statement was made. I personally cannot make all these figures, Mr. Durment.

Q. Then you don't know how they were made nor how that was arrived at?

A. Except in a general way.

Q. Well, did you make any of those figures on that Ex. 58?

A. Oh, yes, I put all the data together after I got it, put it

in the statement.

Q. Did you figure out your 7.9 per cent yourself, or was that given to you?

A. The data upon which to figure to arrive at that percentage was given to me.

Q. That is just what I want. Now, what data was given you upon which you figured that?

A. Simply a memorandum showing what Minnesota's proportion was on a mileage prorate.

Q. For that month?

A. For that month, and what it would have been at the basis of a two cent maximum, the legal two cent maximum.

Q. And you don't know how they arrived at those figures that they gave you?

A. No, sir, I have to rely upon their intelligence in matters of that kind.

Q. Then you don't know whether they took up each individual instance or ticket and went into it in detail and then summed the totals and made their comparison, or how they did it?

A. No, sir, I am relying upon their judgment and experience in such matter to do that work right.

Q. Nor you don't know whether when they came to a case, if there were such, in which Minnesota's proportion of the through rate was less than two cents a mile, they raised it to two cents in this calculation or not?

A. No, but I assume they did.

Q. You assume they did.

A. I assume they did.

Q. But you don't know whether they did or not?

A. No; I have already stated I didn't do the work myself personally.

Q. I suppose you know that where they found a case that Minnesota's proportion of the through rate was more than two

cents a mile they took off that and cut it to two cents in this calculation?

A. Where it was more than two cents?

Q. Yes.

A. I assume they did.

Q. You say that upon the making of a division of interstate passenger business and apportioning to Minnesota its proportion upon the basis of mileage and not upon the basis of mileage and maximum legal rate, Minnesota gets 7.9 per cent more than it would be entitled to or would receive if you apportioned upon the basis of mileage and maximum legal rate; yet the average interstate business in Minnesota was less than two cents per mile in the year 1908. Now, personally, I can't see how, if the average interstate rate per mile is less than two cents, that there could be any difference.

A. You speak of what year?

Q. This is 1908 that I am speaking of now; and you took your figures in January, 1908, as I understand it, upon which you made these computations or this notation on Ex. 58; that is, that you could figure any overage?

A. It is quite evident that in computing the 7.9 per cent, Minnesota was not allowed the revenue to bring up its proportion to 2 cents of the through; that is to say, that only on such business as contributed more than two cents to Minnesota was it brought down to two cents—over two.

Q. That is to say, that Minnesota on through hauls had deducted from its through everything over—

A. Over two cents.

Q. —two cents?

A. Yes, sir.

Q. But where the through haul was made at a rate less than two cents, Minnesota stood her share of the loss?

A. Yes, sir.

Q. In other words, it was not an equalization for Minnesota?

A. We didn't work it from both states, no.

Q. You simply worked it where it would come off from Minnesota only?

A. We limited the allowance to Minnesota at the legal maximum rate of two cents a mile.

Q. That is to say, that in any case where Minnesota got less than the legal maximum you cut off to the legal maximum?

A. No, I don't think that is true.

Q. You cut down to the legal maximum?

A. Read the question again. I think it is the other way.

Q. "More," I should say. In any case where Minnesota would get more than the legal maximum, you cut off down to the legal maximum?

A. Yes, sir.

Q. But in those cases where she would get less, you didn't build up to the legal maximum?

A. No, sir, we did not.

Q. That is, she must stand her share of the loss of through rates that are made at less than the legal maximum, but she can't have her share of the profit of rates that are made above the legal maximum?

A. I wouldn't classify it as either losses or profits.

Q. Well, it would be, as to the state, a loss or profit, wouldn't it?

A. That would depend entirely upon the standpoint you are figuring from.

Q. Sure.

A. If you speak of it as a matter of revenue accruing in the state of Minnesota, why naturally it would affect it.

Recess until 2 P. M.

AFTERNOON SESSION.

Q. Will you look at Ex. 57, Mr. Johnson? This exhibit, if I understand it, is intended to show the increase of passengers

interstate and intrastate in Minnesota in the year 1908 over the year 1907?

A. Passengers carried one mile, yes, sir.

Q. And you have reduced that to a percentage so that the increase in intrastate was 11.8 per cent, was it?

A. Yes, sir.

Q. And interstate 8.9 per cent?

A. Yes, sir.

Q. Did you make a similar calculation as to the other states than Minnesota?

A. Not other than is shown right on this exhibit.

Q. That is, you didn't separate the intrastate and the interstate in the other states than Minnesota?

A. No, sir.

Mr. BUTLER: Well what does this "other than Minnesota" mean?

WITNESS: It means all the business outside of Minnesota.

Q. That is what I wanted to call attention to.

A. In one item.

Q. So that if you take the total of the business in Minnesota for the years 1907 and 1908, the increase for that year is at the same rate as in all the other territory?

A. Yes, sir, outside of Minnesota.

Q. But there is a difference in the rate of increase in Minnesota between interstate and intrastate?

A. Yes, sir, a slight difference.

Q. But you have not made any figures to show whether that same difference would exist in the other states or not?

A. No, I have not prepared any exhibit to show that.

Q. Now, we will look at Exhibit 59. What is intended to be shown by this Exhibit 59, Mr. Johnson?

A. The remarks that I am about to make apply to the months of May and June, 1907, and January and February, 1908—two summer and two winter months—during which the

two-cent rate was in effect in Minnesota. The first proposition was to find out what revenue had been affected by the putting into effect of the two-cent maximum rate, divided as between the intrastate business in Minnesota and the interstate business in Minnesota. The first thing, having arrived at that, we applied to the revenue that was actually received under the two-cent maximum the rates that we could have collected at the three-cent maximum, the difference between one and the other represented a specific reduction in the revenue for each class, intrastate and interstate. It was therefore quite easy to figure to what extent the revenue was affected, as represented by a percentage. Now, it is infinitely more accurate to use a percentage as applied to a whole year when your basis is a few months, because the business fluctuates from month to month, and the four months taken might not be one-third of the year's business; consequently, if you multiplied the reduction in the revenue by three, you would not arrive at as accurate a result as you would by using a percentage.

Mr. BUTLER: That is, applying the percentage to the actual revenue that was received?

WITNESS: Yes, sir.

Mr. BUTLER: Applying the percentage that was established by the period selected to the actual revenue for the year, instead of multiplying your loss by three in case four months was taken, or by six in case two months was taken?

WITNESS: Yes, sir.

The MASTER: There would not be so much difference in the percentage—

Mr. BUTLER: No.

The MASTER: —as there would in taking the gross amounts and multiplying by three?

Mr. BUTLER: That is the thought.

WITNESS: That is the idea of using the percentages all through these exhibits.

Mr. BUTLER: I hope I didn't break your line of thought.

Q. Let us see if I get it: The idea as it strikes me is that, take it throughout the course of the year, it is reasonable to suppose that relatively the proportions are the same as between interstate and intrastate, and yet the volume in any one month may differ very materially from the other months?

A. Yes, sir. But please remember that the intrastate business was figured separate and distinct from the interstate. But, you express it properly when you say that the volume of business may change from month to month, and these four months might not represent one-third of the whole year's business.

Q. But the percentage or proportion is apt to be the same?

Mr. BUTLER: The percentage of the effect of the change of rate—

The MASTER: That would be practically constant?

WITNESS: That is it, yes, sir.

Mr. BUTLER: —would be substantially the same, whether it was a big month's business or a small month's business?

WITNESS: Yes, sir.

Mr. BUTLER: Now, if you want to resume where we ended.

WITNESS: Do you want me to go on?

Mr. BUTLER: Yes, go on and explain.

WITNESS: The four months heretofore mentioned were analyzed, and it was found that, during that period, as to the intrastate passenger business, the revenue received at the two-cent maximum was $312,538.33, on the business affected; or, in other words, the business which under the three-cent maximum would have been affected by the two-cent maximum. The same business would have produced at the three-cent maximum, or the rates in effect under that maximum, $459,799.92, a reduction of $147,261.59, comparing the two-cent maximum with the three-cent maximum; or, expressed in a percentage, 32.03 per cent of the revenue that would have been collected at the

three-cent maximum. The same remarks and principles were applied to the interstate business handled in the state of Minnesota; the reduction brought about by the new maximum of two cents applied to the interstate rates that it was necessary to change, being $97,234.70 or 31.52 per cent of the business affected, or 16.36 per cent of the whole business, affected and unaffected. By the whole business I mean all the interstate business in the state of Minnesota. In order to get at a fair estimate of the loss on the intrastate business in Minnesota in the year 1906, I considered it fair to take the average rate per passenger per mile received in 1906 under the three-cent maximum, and against that place the average rate per passenger per mile received during the year ending June 30, 1908.

Mr. BUTLER: Under the two-cent maximum?

WITNESS: Under the two-cent maximum. The difference between these two rates being 0.47476 cents per passenger per mile, or a reduction of 19.78 per cent on the whole intrastate revenue for the year ending June 30, 1906. I believe this basis is justifiable on the ground of actual results derived from the having in effect the three-cent maximum during one year and the two-cent maximum the other year, because it takes into consideration what the Company actually received under one maximum and what it received under the other, including voluntary reductions of all kinds. In other words, we could not claim a reduction on the revenue in 1906 except on the basis of what we actually received. If we didn't receive three cents per passenger per mile, then certainly we could not lose it.

Q. I suppose in the case of Ex. 59 as in these others, the investigations and the preliminary figures upon which you based these computations of percentages were made by others and given to you?

A. Oh, yes, made by our auditor of passenger receipts.

Q. Will you let us see the information which was handed you with reference to the business of these two months, May

and June, and January and February, 1907 and 1908?

A. I haven't the information with me.

Mr. BUTLER: It has been preserved, no doubt, hasn't it?

WITNESS: I think so.

Q. Now, as I understand the situation, you took the actual business done in the months of May and June, 1907, in Minnesota, and also in January and February, 1908?

A. Yes, sir.

Q. You took the interstate business that was actually done and the intrastate business actually done?

A. In those four months.

Q. In those four months?

A. Yes, sir.

Q. Now, did you take all the interstate and all the intrastate business done in Minnesota in those four months, or only portions of it?

A. We first took that portion which was affected by the application of the two-cent maximum, figured out the loss on that basis, applied that loss to the whole business affected and not affected, and reached the second percentage.

Q. But what I want to get at now is, that you took that which was affected, you say?

A. Yes, sir.

Q. Now, what do you mean by affected? What business was affected by the two-cent rate in those two months?

A. Business which under the three-cent rate, or from the fact of the three-cent maximum was in effect, was carried at over two cents per passenger per mile.

Q. That was carried at over two cents?

A. Yes, sir.

Q. And eliminated from that consideration on this point, then, all that was carried at two cents and under?

A. Eliminated to this extent: it was not raised.

The MASTER: The passenger business that was carried at

less than two cents per passenger per mile when the three-cent maximum was in effect—?

WITNESS: Was not raised to reduce this loss.

Q. Yes, but in picking out this business, taking into account the actual business done in the months of May and June, 1907, and January and February, 1908, I understand you took out and got the aggregate of it or the results of it only such business as before the two-cent rate went into effect was producing more than two cents a mile?

A. That is true.

Q. And when you got that, the total of the business which before the two-cent rate went into effect was producing more than two cents a mile, what did you do with that? What was your next step?

A. I don't quite get that second question.

Q. Well, maybe I can help out.

A. Maybe you can clarify that for me a little.

Q. Having selected out the business which you say was affected, the traffic which was affected, that is, all those cases in those two months which under the old schedule would have produced more than two cents a mile, you, I suppose, took the difference between two cents a mile on that and what would have been received at the old schedule?

A. Yes, sir.

Q. And that difference you figured as your loss in revenues in those months because of the two-cent act?

A. Yes, sir; that was the reduction in revenue.

Q. And that was with reference to both state and interstate?

A. Both; the same principle was followed in both cases.

Q. Yes, but you have made two separate calculations?

A. Yes, sir.

Q. You got the loss on interstate for those months that way in Minnesota and also the loss for intrastate in Minnesota in

that way?

A. Yes, sir.

Q. Now, having got that loss of revenues for those months, what was your next step in your method of computation?

A. To find out what percentage of the reduction, in dollars and cents, represented as a percentage, first, of the business affected or carried at over two cents a mile which would be affected, and also a percentage of the whole business.

Q. And you did that with reference both to intrastate and interstate business?

A. Yes, sir.

Q. Then, as I understand your first item here on Traffic Affected, Interstate Passengers in Minnesota, you have found that the reduction on interstate passenger business in Minnesota during those months would have been 31.52 per cent of the entire business?

A. No, sir; of the interstate traffic affected.

Q. And applying that percentage, then, to the business which was done or would have been done at three cents in Minnesota, in 1906, you get the reduction in revenue to be $97,234.70?

A. Yes, sir; that would have been the reduction in revenue; in fact, it was the reduction in revenue.

Q. Well, it couldn't have been so, because the two-cent rate was not in effect then.

A. But if you will look at the caption you will find the four months of the fiscal year ending June 30, 1908, at which time the two-cent maximum was in effect.

Mr. BUTLER: And when those percentages are obtained they are applied back to the results of the year.

Q. Well, let me see. My understanding is of your heading of this here that you are establishing a percentage of loss on the business of 1907 and 1908 for the purpose of showing what would have been the loss on the 1906 business?

A. That is entirely true.

Mr. BUTLER: On the basis of the percentage so established.

WITNESS: On the basis of the percentage.

Q. And this loss, then, is the loss (the $97,234.70) that you have suffered in 1906?

A. No, sir.

Q. What is it then?

A. It is a percentage. That is preliminary to computing the loss for 1906, based on actual experience.

The MASTER: You take that and go back to the business of 1906?

WITNESS: That is the idea.

Q. I understand it now, I think, that you take the first item under Interstate Passengers in Minnesota on Traffic Affected, the $308,428.18 is the amount of revenue which was in fact collected on that business in the year 1908 or that would have been collected at three cents?

A. That would have been collected out of the three-cent maximum.

The MASTER: That is, at the full three cents?

WITNESS: No, not of the full three cents.

The MASTER: That is what we want to know.

WITNESS: No, sir.

Mr. BUTLER: Make that clear.

WITNESS: I want to make it clear to you that we took the tariffs that were in effect at the time the maximum was three cents and applied those same tariffs to that business.

The MASTER: This was not a three-cent basis at all?

WITNESS: For everything? No, sir.

The MASTER: No, it was what you would have got if the three cents had been in effect?

Mr. BUTLER: No, it is on the basis of the tariff during the period that the three-cent maximum law was in effect.

Q. Then during the four months in 1907 and 1908 the reve-

nue which you say was affected, if charged for at the rates which were in force before the two-cent act went into effect, would have produced this $308,428.18?

A. Yes, sir.

Q. And in some cases it may have been three cents, and in some cases it may have been less?

A. It may have been less, but nothing less than two cents.

The MASTER: But all over two cents?

WITNESS: All over two cents.

Q. All over two cents, but nothing less than two cents?

A. Nothing less than two cents.

Q. Now then, you took that same business and applied two cents a mile to it, as I understand it, and that gave you $211,192.48, or did you take the amounts which you actually received?

A. The amounts we actually received under the two-cent maximum.

Q. And in some cases that was less than two cents, wasn't it, or do you know?

A. No, I think not. I am not positive on that point, but I don't think so.

Q. Well, why would it not be so in one case as well as the other? If you speak of it as a three-cent maximum and that includes everything between two and three, why would you not under the other maximum also take that which was under two cents in making your figures?

A. I don't quite catch that.

Q. Well, here is the point: You are comparing here and showing a percentage of loss?

A. Yes, sir.

Q. And, presumably, a percentage of loss upon actual transactions?

A. Yes, sir.

Q. Now, you take the revenue that would have been received

at what you call the three-cent maximum; now, you say that doesn't mean three cents in all cases, it means three cents and everything under that?

A. Down to two.

Q. Down to two?

A. Yes.

Q. And nothing under two. Now, under the three-cent maximum on this business up here you would have received $308,428.18, and yet for much of the traffic you would have collected less than three cents a mile. Now, if you are going to compare that with the receipts on the two-cent maximum, why don't you take into that business less than two cents just as you did under the other less than three?

A. We have taken the business under the two maximums exactly on a par.

Q. Well, how do you know? That is what I want to know.

A. It is illustrated by the fact that in the next item there we show that on all traffic the revenue at the two-cent maximum was $497,208, which means that there was $286,000 worth of business that was not affected at all.

Q. It may be a reason in your mind, but it doesn't explain anything to me. How do you know that you have got in this $211,193.48 here under the head of Traffic Affected, revenue at the two-cent maximum, anything that carried less than two cents a mile?

A. That I think would naturally be governed by following the business itself and the tariffs themselves. We know exactly what tariffs are used as applied to certain business, and consequently that would be the business that we would pick out.

Q. Well, I am not asking what would be or wouldn't be; I am asking what was actually done. Now, you didn't make up these figures yourself you said.

A. Oh, no, I didn't personally do it, no, sir.

Q. They were made up by somebody else for you?

A. In the auditor of passenger receipts' office, yes, sir.

Q. And you don't personally know what is in them, whether it is two cents a mile or under two cents a mile?

A. I doubt if there is anything there that is under two cents.

Q. I don't care what you think; what do you know?

A. Well, I didn't make all the figures myself. It would be utterly impossible for me, under oath here, to state something I don't know.

Q. Then you don't know whether in making up this $211,193.48 they used two cents a mile, that is, whether every mile included in that, or every two cents included in that, represented a mile of travel or not?

A. I don't think it did.

Q. No, you think that it included some less than that?

A. I believe so. The question of meeting short-line rates would come in there, Mr. Durment.

Q. Then the fact is, if that is true, that the law allowed you to receive more than that if you wanted to, if you wanted to charge it, during those months?

A. As I don't make the tariffs I couldn't say so.

Q. Then the only reason why you can't say so is that you don't know what is in there, that is the only reason?

A. I only know what my request was, and my request was to the auditor of passenger receipts that he analyze the business and tell me what business would be affected by the application of the new maximum of two cents per passenger per mile, and I assumed that he had sufficient knowledge to work that out for me.

Q. Yes, but this $211,193.48 which you start in with as one of the figures upon which you base your computations as to percentages, represents actual receipts for four months in the years 1907 and 1908?

A. Yes, sir.

Q. On certain business?

A. On the business that was affected by the change in the maximum rate.

Q. Well, now, then, that means one of two things: Either that for every two cents included in that sum of $211,193.48 one passenger was carried a mile, or it means that there may have been more than one passenger carried a mile for every two cents. It necessarily means one of these two things, which does it mean?

Mr. BUTLER: It means that either one, two, or more were carried one mile, doesn't it?

Mr. DURRENT: It means, yes—

Mr. BUTLER: All right, if you are satisfied I am.

WITNESS: Not having the information at hand necessary to answer the question, I decline to do so at this time.

Q. Well, that means you don't at this time know?

Mr. BUTLER: He means that he hasn't the figures that he told you were made up and that he thinks are preserved, that he hasn't them here. We will go and get them if you will pause long enough, if they can be found.

Mr. DURRENT: Well, we can have them at the next sitting, can we?

Mr. BUTLER: Yes; they are subject to your examination.

WITNESS: Informally, it might be well to say that we don't and haven't, under the two-cent law, been able to get two cents. That is to say, that we may have to meet short-line rates within the state that are based on the maximum of two cents, we couldn't get two cents a mile.

Mr. BUTLER: If you charge two cents you don't get the traffic?

Mr. DURRENT: Well, that may be.

WITNESS: That is the idea. For me to say whether every passenger in that $211,000 represents passengers that all paid

two cents a mile, I couldn't tell you that off-hand, Mr. Durment.

The MASTER: Wasn't there some suggestion yesterday that it didn't represent anything under two cents a mile, because such a rate would not be affected by the two-cent law?

Mr. DURMENT: Well, I think so, and we can ask it again.

WITNESS: I have already stated, your Honor, that the $211,193.'8 represents business that was affected by the change in the maximum rate. Now, whether it all paid two cents a mile or two and one-half cents, or whether it all paid two cents I can't say, from the change.

Mr. BUTLER: It includes, if I may suggest informally, only the business which under the tariffs in effect prior to the change would have been affected by the two-cent maximum; that is, that was done at higher than two cents, but whether or not after the new tariffs made necessary by the two-cent maximum, there are included items of trips which were carried at less than two cents at that time, Mr. Johnson can't state, by reason of not having before him the sheets by which the computations were made.

The MASTER: Well, I guess we can get at that later.

Q. As I understand you, no business or no rates which were under two cents a mile prior to the time of the enactment of this two-cent act in Minnesota was affected by the act?

A. Naturally it was not.

Q. Then, if that be true on the business affected, or in making the figures of $211,193.48 on the business affected, that would be two-cent business, wouldn't it, under the act, two cents a mile?

A. That I cannot say. That seems to me is more a traffic proposition than an accounting proposition. I think I have already stated to you that any business on which we collected less than two cents prior to the two-cent maximum law was not taken into consideration in that calculation.

Q. In that calculation?

A. No, sir; that is to say, we didn't raise the revenue to the two cents.

Q. That is what I thought, to start with, and then I thought you were uncertain about that. I thought you said that some time ago.

A. I did, yes, sir.

Q. The long and the short of this first computation of percentage on Ex. 59, as I gather from your testimony, is this: You say that you have been furnished with figures by some persons in a department of the Northern Pacific, showing that upon certain business, interstate passengers in Minnesota, there was received in four months specified in the exhibit, $211,193.48, and that was the result of passages paid at two cents a mile. Now, you say that before that act went into effect you would have received, on the same business, computed at three cents and under but not less than two cents, $308,428.18; and that that indicates a reduction in revenue under the two-cent rate of 31.52 per cent?

A. It does, yes, sir, on the traffic affected. Do you want me to continue that answer?

Q. Well, that answers the question. Now, have you anywhere figured what would be the percentage of reduction or increase, (whichever it might be) for those four months on the traffic which was carried in those four months for less than two cents a mile if you had charged the rates at less than two cents a mile which were in force before the act went into effect?

A. As I understand your question, you want to know—

Mr. BUTLER: Don't you mean that if it had been raised to the maximum of two cents?

Mr. DURMENT: No, I mean to ask whether he has compared the loss or gain upon the four months' business, applying rates which were under two cents under the old law and under the

new.

WITNESS: No, sir, no, sir.

Mr. BUTLER: The law wouldn't affect that one way or the other.

Mr. DURMENT: The law might not, but the revenue might be affected by it just the same.

Mr. BUTLER: The law wouldn't affect the rates at all. They might perhaps be changed, but the law wouldn't—

The MASTER: That is, you think it might change these figures and therefore change the percentage?

Mr. DURMENT: Yes; in other words, he is figuring a percentage; he takes a percentage there on a part of the business, as comparing a part of the business, and, not only that, but the comparison is based upon the straight maximum in one case and on a variable figure between two cents and a higher maximum in the other. Now, it might make a difference in the percentage; it might make a difference in the revenue, I don't know.

WITNESS: I don't think, for the purpose for which these percentages are figured out, that it would cut any figure.

Mr. DURMENT: Well, it might not, but—

WITNESS: The idea of these percentages is to find out what the effect would be applying them to the business for the year ending June 30, 1906, as a measure. As I have already stated, to take these losses and multiply them by three might not and probably would not, produce accurate results.

Q. Where did you get your totals from which you figure your percentages on the next basis of percentage, on all traffic "Revenue at the two-cent maximum, $497,208.34?"

A. Well, it is only necessary to figure out what the total interstate traffic was during those four months.

Q. I ask you where you got them.

A. From the records of the Company.

Q. Did you figure them yourself, in that case?

A. No, sir, they were figured by our auditor of passenger receipts.

Q. And handed to you?

A. Yes, sir.

Q. Those are not your figures?

A. No, sir, but they are from records that are in the possession of the Company, current records of the accounting department.

Q. Now, does that mean revenue on all traffic in Minnesota, both state and interstate, during those four months?

A. No, sir.

Q. That $497,208.34?

A. That $497,208.34 represents the total interstate passenger revenue in Minnesota for the four months shown in the note; that is to say, May and June, 1907, and January and February, 1908.

Q. At whatever rate was carried?

A. At whatever rate, it was the actual revenue.

Q. Now, when you take your revenue, which would have been, at the three-cent maximum, $594,443.04, do you understand that that was at three cents straight or at the fares or rates which were in vogue or in force?

A. The same remarks apply to that as apply to the $308,428.18. It wasn't necessary to make any other calculation.

Q. Well, you may answer my question, Mr. Johnson. I think it is plain, and gives me the information without my figuring back.

A. Well, I will have to figure it for you, in order to answer that for you.

Q. Well, you may figure it.

A. The $497,208.34 is the total interstate passenger revenue in Minnesota during the months of May and June, 1907, and January and February, 1908, being $211,193.48 of business affected under the two-cent maximum, and $286,014.86 which

was not affected by the two-cent maximum.

Q. My question was whether the $594,443.04 was the total receipts—I mean what would have been the total receipts on all interstate business done in Minnesota in those four months if you had charged at three cents a mile straight, or if it is the sum which resulted from charging at the rates which were in effect before that.

A. It is what the Company would have received had the three-cent maximum in Minnesota continued.

Q. Does that mean what it would have received at three cents a mile, or does that mean at the tariff which was in force?

A. At the tariffs that were in force during the three-cent maximum.

Q. You have shown on Exhibit 59 here, the percentage based upon the average rate per passenger per mile in 1906 and in 1908, which shows an average reduction or decrease in rate of 19.78 per cent?

A. Yes, sir.

Q. You have had the actual figures for the business of the year 1908 on your road, have you not?

A. I think so, yes, sir.

Q. In none of your exhibits you have presented here have you given us the totals for the year 1908, have you?

Mr. BUTLER: You mean the fiscal year ending June 30, 1908?

Mr. DURMENT: Yes.

A. What do you mean by totals? totals as to what?

Q. Well, I mean the total revenue received from interstate and intrastate passenger receipts in Minnesota for the fiscal year ending June 30, 1908.

A. No, I haven't given you that.

Q. Do you know what they are?

A. I can't answer off-hand, no, sir.

Q. But during that entire period this decreased rate of 19.78 per cent on the average would apply, wouldn't it, to the business?

A. This decrease that you refer to is on the intrastate business within the state of Minnesota.

Q. Yes, all right. Well, on the intrastate business of the state of Minnesota during the entire year 1908 (the road's fiscal year) that decrease applied to the rates, didn't it?

A. The—

Q. The business of the year 1908 (the road's year 1908) was done at an average rate of 19.78 per cent less than it was in 1906?

A. Within the state of Minnesota, yes, on the intrastate business.

Q. And instead of a decrease, how much of an increase of revenue was there in that year?

A. Within the state of Minnesota on the intrastate business?

Q. Yes.

A. I don't believe I have the record here in that.

Mr. BUTLER: You mean as compared with the former year?

Mr. DURMENT: Yes, 1906.

Mr. BUTLER: That is, you want to get the difference in earnings between the last fiscal year and the next preceding year?

Mr. DURMENT: No, what I want to show is that applying your decreased percentage here to your actual business, instead of making percentages and figuring losses, you get an increase of ten per cent.

Mr. BUTLER: Over what?

Mr. DURMENT: Over the year 1906.

The MASTER: Induced, you claim, by the fact that there was an increase?

Mr. DURMENT: I don't know what the fact was; we will argue that, but all these decreases which they figure and show

great losses to the Company, actually practically show a gain.

Mr. BUTLER: Yes, the road has gained every year it has existed, I guess, and I think perhaps one of these tables shows about one per cent in Minnesota where it has gained on an average something like twenty per cent everywhere else every year.

WITNESS: I don't believe I have that information with me.

Mr. BUTLER: They haven't prevented it from growing at all, yet!

Mr. DURMENT: No, and there isn't much danger they will.

Mr. BUTLER: There will have to be another session before they can stop the growth of that road.

Q. It has been claimed, (I don't know whether by you, but by other witnesses) that the putting into effect of the two-cent passenger rate necessarily lowered the through rates or interstate rates in Minnesota.

Mr. BUTLER: He hasn't made any claim on the subject.

Q. But the figures which you gave us this morning show that there was a slight reduction in interstate rates from 1906 to 1908; are you able to say whether there has been any increase of earnings interstate in Minnesota in the year 1908 over the year 1906?

A. Yes, sir; there is quite an increase.

Q. At the next session I wish you would furnish us, to be used in connection with this Exhibit 59, the receipts from the Minnesota intrastate passenger business during the fiscal year ending June 30, 1908; the same thing for the fiscal year ending June 30, 1906.

A. The revenue you want?

Q. Yes, the revenue. And the revenue for Minnesota interstate business for each of the two periods.

A. Yes.

An adjournment was here taken until the morning of Wednesday, December 23, at 10 o'clock, to meet in Mr. Morgan's room, at the capitol building.